

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Lead Case No. 15-11835-scc; Adv. Proc. No. 15-00126-scc
4 - - - - -x
5 In the Matters of:
6 SABINE GAS & OIL CORPORATION, et al.,
7
8 Debtors.
9 - - - - -x
10 SABINE GAS & OIL CORPORATION, et al.,
11 Plaintiff,
12 v.
13 WILMINGTON TRUST, N.A.,
14 Debtor.
15 - - - - -x
16 United States Bankruptcy Court
17 One Bowling Green
18 New York, New York
19
20 July 16, 2015
21 10:58 AM
22
23 B E F O R E:
24 HON. SHELLEY C. CHAPMAN
25 U.S. BANKRUPTCY JUDGE

15-11835-scc Sabrine Oil & Gas Corporation, et al.

Ch 11

HEARING re Debtors' Motion for Entry of an Order Directing
Joint Administration of Chapter 11 Cases

Debtors' Motion for the Entry of Interim and Final Orders
Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 507,
Bankruptcy Rule 2002, 4001, and 9014, and Local Bankruptcy Rule
4001-(2) (I) Authorizing Debtors' Limited Use of Cash
Collateral, (II) Granting Adequate Protection to the
Prepetition Secured Parties, (III) Modifying the Automatic
Stay, and (IV) Scheduling a Final Hearing

Debtors' Motion for Entry of Interim and Final Orders (I)
Authorizing the Debtors to (A) Continue Using the Cash
Management System, (B) Maintain Existing Bank Accounts and
Business Forms, (C) Continue Intercompany Transactions, and
(II) Granting Superpriority Administrative Expense Status to
Postpetition Intercompany Transactions

Debtors' Motion for Entry of Interim and Final Orders
Authorizing the Debtors to (I) Pay Prepetition Wages, Salaries,

1 Other Compensation, and Reimbursable Expenses, and (II)
2 Continue Employee Benefits Programs
3
4 Debtors' Motion for Entry of Interim and Final Orders
5 Authorizing Payment of (I) Working Interest Disbursements and
6 (II) Royalty Payments in the Ordinary Course of Business
7 Debtors' Motion for Entry of Interim and Final Orders
8 Authorizing Payment of (I) Operating Expenses, (II) Joint
9 Interest Billings, (III) Shipper and Warehousemen Claims, and
10 (IV) Section 503(b)(9) Claims
11
12 Debtors' Motion for Entry of Interim and Final Orders
13 Authorizing the Payment of Certain Prepetition Taxes and Fees
14 Debtors' Motion for Entry of Interim and Final Orders Approving
15 Notification and Hearing Procedures for Certain Transfers of
16 and Declarations of Worthlessness with Respect to Common Stock
17 and Preferred Stock
18
19 Debtors' Motion for Entry of an Order (I) Authorizing the
20 Debtors to (A) Prepare a List of Creditors in Lieu of
21 Submitting a Formatted Mailing Matrix and (B) File a
22 Consolidated List of the Debtors' 50 Largest Unsecured
23 Creditors and (II) Approving the Form and Manner of Notifying
24 Creditors of Commencement of These Chapter 11 Cases
25

1 Debtors' Motion for Entry of an Order Extending Time to File
2 Schedules of Assets and Liabilities, Schedules of Current
3 Income and Expenditures, Schedules of Executory Contracts and
4 Unexpired Leases, and Statements of Financial Affairs
5
6 Debtors' Application for Entry of an Order Authorizing and
7 Approving Employment and Retention of Prime Clerk LLC as Claims
8 and Noticing Agent for the Debtors and Debtors in Possession
9
10 Debtors' Motion for Entry of an Order Establishing Certain
11 Notice, Case Management, and Administrative Procedures
12
13 Adv. Proc. 15-00126 (SCC)
14 Complaint, Sabine Oil & Gas Corporation v. Wilmington
15 Trust, N.A.
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25 Transcribed by: Lisa Beck and Sherri Breach

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1 P R O C E E D I N G S

2 THE COURT: How's everyone today? Good morning.

3 MR. BENNETT: Good morning, Judge.

4 THE COURT: All right. I'm ready when you are.

5 MR. BENNETT: Your Honor, Ryan Bennett on behalf of
6 the debtors.

7 THE COURT: All right.

8 MR. BENNETT: My colleagues, I think, are still out in
9 the hallway. Here they come right now.

10 THE COURT: All right. We'll wait till everyone gets
11 in the room.

12 MR. BENNETT: Great. Thank you, Your Honor.

13 THE COURT: There is some extra room in the overflow
14 room if anyone feels crowded or uncomfortable.

15 (Pause)

16 MR. HENES: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. HENES: John Henes, Kirkland & Ellis, on behalf of
19 Sabine and its affiliated debtors.

20 Your Honor, just as a starting point, I think we were
21 hopeful that there wouldn't be anything contested today but
22 with respect to cash collateral, there will be one party make
23 an objection, Akin Gump, on behalf of the trustee for the 2017
24 notes.

25 THE COURT: Okay.

1 MR. HENES: So you will hear some arguments. And my
2 partner, by way of introduction, Chris Marcus, will be handling
3 the cash collateral motion. And if it pleases the Court, I'd
4 also like to make some other introductions, Your Honor --

5 THE COURT: That would be wonderful.

6 MR. HENES: -- as we start.

7 THE COURT: Thank you.

8 MR. HENES: At counsel table also is Ryan Bennett --

9 THE COURT: Okay.

10 MR. HENES: -- one of my partners. And Mr. Bennett
11 will be handling all of the other motions today. Sitting --

12 THE COURT: Just to be clear, because we've been
13 checking the docket religiously and I didn't see anything on
14 the docket in terms of any objection.

15 MR. HENES: There was no official objection.

16 THE COURT: There's nothing filed.

17 MR. HENES: But to be fair to Akin Gump --

18 THE COURT: Sure.

19 MR. HENES: -- while we've been keeping them in the
20 loop on everything --

21 THE COURT: That's fine.

22 MR. HENES: -- they saw the cash collateral when it
23 was filed.

24 THE COURT: Okay.

25 MR. HENES: Sitting in the front row is Michael

1 Magilton.

2 THE COURT: Okay.

3 MR. HENES: Mr. Magilton is the chief financial
4 officer of Sabine.

5 THE COURT: All right.

6 MR. HENES: He's also our first day declarant and he
7 is here today to -- if there is any need for cross-examination
8 or questions, he's here. I'd like to move his declaration into
9 evidence if people don't have an objection --

10 THE COURT: Okay.

11 MR. HENES: -- if it pleases the Court.

12 THE COURT: All right. Any objection to the admission
13 into evidence of Mr. Magilton's first-day affidavit.

14 MR. QURESHI: No objection, Your Honor. We will have
15 some cross-examination in connection with cash collateral.

16 THE COURT: All right. Thank you very much.

17 (Declaration of Michael Magilton was hereby received into
18 evidence)

19 THE COURT: It's going to be helpful to me at least
20 for today for you to remind me who you are and who you
21 represent because the one thing that's clear is there are a lot
22 of different constituencies. All right.

23 MR. HENES: And I'll go around the room, too, Your
24 Honor, to try to be helpful there.

25 THE COURT: Okay.

1 MR. HENES: In addition, I'm just looking at
2 (indiscernible) sitting right here is Jonathan Mitchell of
3 Zolfo Cooper. Mr. Mitchell is also the CRO of the company. We
4 filed a motion for approval of Mr. Mitchell as CRO. It's not
5 for today --

6 THE COURT: Right. Okay.

7 MR. HENES: -- but it's been filed. In addition,
8 Lazard is the proposed financial advisor and back there is
9 Brandon (indiscernible) --

10 THE COURT: Okay.

11 MR. HENES: -- and who's been working very hard on
12 this.

13 I also want to point out we did provide last week
14 first day motions to the United States trustee's office and Mr.
15 Schwartzberg worked very hard with us.

16 THE COURT: Is Mr. Schwartzberg?

17 MR. SCHWARTZBERG: Your Honor, I'm in back.

18 THE COURT: Hello, Mr. Schwartzberg.

19 MR. HENES: How are you?

20 THE COURT: How are you? Thank you.

21 MR. HENES: But we want to thank Mr. Schwartzberg for
22 working with us --

23 THE COURT: Okay.

24 MR. HENES: -- in resolving all issues that the United
25 States trustee's office --

1 THE COURT: Excellent.

2 MR. HENES: --

3 THE COURT: Okay.

4 MR. HENES: -- had for today.

5 Then there's a whole cast of characters in the room
6 and I'll -- Margo Schonholtz is here to name a character
7 partner. But --

8 THE COURT: Hello, Ms. Schonholtz. How are you?

9 MS. SCHONHOLTZ: Good morning, Judge Chapman.

10 MR. HENES: -- with Willkie Farr & Gallagher,
11 represents our first lien lenders. We've been working very
12 hard with Ms. Schonholtz and her team both on the cash
13 collateral order as well as all of the other motions and just
14 talking about the case --

15 THE COURT: Okay.

16 MR. HENES: -- and for the last few months.

17 Also, we have Brian Herman from Paul Weiss.

18 THE COURT: Good morning.

19 MR. HENES: Represents the second lien trustee, the
20 official second lien trustee.

21 MR. HERMAN: The agent.

22 MR. HENES: The agent. I apologize.

23 THE COURT: The second lien agent.

24 MR. HENES: Agent, yes. Apologize for that.

25 THE COURT: Okay.

1 MR. HENES: And Mr. Herman and Alan Kornberg have been
2 very involved as we've moving forward --

3 THE COURT: Yes.

4 MR. HENES: -- over the last few months.

5 We also have Robert Stark from Brown Rudnick.

6 THE COURT: Hello, Mr. Stark. How are you?

7 MR. HENES: Mr. Stark represents the 2019 and 2020
8 noteholders. Those are the -- and I'll go through this in a
9 minute but those are the legacy Forest notes. And then you've
10 already seen a few people from Akin Gump but we have Phil
11 Dublin, Mike Stamer and Abid Qureshi of Akin Gump on behalf of
12 the 2017 note trustee.

13 MR. STARK: Correct.

14 MR. HENES: Thank you.

15 THE COURT: 2017 trustee.

16 MR. HENES: Yes.

17 THE COURT: Okay.

18 MR. HENES: Your Honor, as I was thinking about how to
19 do this, I definitely don't want to go through the whole first
20 day declaration. Obviously, I think it was very detailed. And
21 I think he did a pretty --

22 THE COURT: And very well done.

23 MR. HENES: Thank you very much, Your Honor.

24 THE COURT: I found the historical and the technical
25 explanations were very helpful and very well written.

1 Appreciate it.

2 MR. HENES: And I should say to point out, since we've
3 been making introductions to everybody, just for the record, I
4 think it's important to note that all of the associates and
5 paralegals, both at Kirkland and all the other firms, have
6 worked unbelievably hard to help us get here and I think that
7 they should be recognized for that.

8 THE COURT: It shows and I appreciate it. Thank you.
9 I hope you have your summer associates here as well.

10 MR. HENES: We do have summer associates here.

11 THE COURT: Excellent.

12 MR. HENES: Mr. Marcus told me I should mention that.
13 I forgot.

14 What I think makes sense is to do a couple things.
15 One, very briefly, just make a couple of, I think, important
16 points about the company and it really goes for this company
17 and all oil and gas companies. Second, to kind of take you
18 through the merger a little bit --

19 THE COURT: Sure.

20 MR. HENES: -- because it's been very helpful to us to
21 go through it --

22 THE COURT: Right.

23 MR. HENES: -- the way that I'll take you through it.
24 And then to let you know what our goal is here. Obviously,
25 it's to restructure but it's also to make sure that this case

1 does not devolve into litigation because that would be bad for,
2 we believe, everybody.

3 THE COURT: I did -- as I hope you would expect, I did
4 read the papers.

5 MR. HENES: Yes.

6 THE COURT: And I did read the adversary complaint
7 which does lay out --

8 MR. HENES: It lays --

9 THE COURT: -- the history but I think it would be
10 helpful to go through it here today and talk.

11 MR. HENES: Thank you, Your Honor.

12 So very briefly on the companies, the company is
13 incredibly capital intensive. So all of these companies that
14 engage in the expiration and drilling of oil and natural gas,
15 it takes a lot of money to go do that.

16 The second thing is, this company is highly
17 dependent -- impacted by commodity prices. And right now,
18 we're clearly in a -- and to say the least, a very challenging
19 commodity price situation.

20 So you have the need for a lot of cash, right. Where
21 commodity prices impacts the profitability of the company and
22 here, we have a company that's just significantly over-levered
23 as well. And so we need to reduce that debt, get ourselves in
24 a position where we can then go out, get the capital that we
25 need to continue our expiration and production and navigate

1 this troubled or challenged commodity price environment. So at
2 the end of the day, that's our goal is to reduce the debt.
3 This is a pure de-leveraging.

4 But we do have this merger and we have a lot of
5 issues. And that's what I'd like to go through now. And I
6 have some demonstratives that I think would be helpful. We can
7 pass them out --

8 THE COURT: Sure.

9 MR. HENES: -- to the Court. Thank you, Your Honor.

10 (Pause)

11 MR. HENES: Okay. So, Your Honor, we turn to -- and
12 I'm sorry. I forgot to number them. But the one on top, it
13 says "Pre-Combination Capital Structure". And what I'm going
14 to be very careful to do here because I -- this is really just
15 for -- to explain things not to --

16 THE COURT: Characterize.

17 MR. HENES: -- characterize things.

18 THE COURT: Right.

19 MR. HENES: I'm not going to talk about cash and
20 assets in general.

21 THE COURT: Okay.

22 MR. HENES: I may point out a couple of issues that
23 are out there but I'm not going to make any arguments.

24 THE COURT: Fair enough.

25 MR. HENES: If you look to your left, what you have is

1 Legacy Forest Oil. And it was a public company and -- well,
2 you'll notice it has four subsidiaries. Those subsidiaries are
3 really shells. They still exist. We didn't file them. They
4 don't have anything in them. All of the assets in operations
5 in Forest was in that one entity which is somewhat unusual,
6 could come up in some of the issues that arise during the case.

7 And if you look at the capital structure, what you had
8 was 105 million dollars of first lien debt and then you had two
9 tranches of notes, the 2019s and the 2020s, which Mr. Stark
10 represents, that's about 800 -- that is 800 million dollars of
11 unsecured notes.

12 On the right hand side, you have Sabine. And Sabine
13 is a privately held -- was a privately held company. It was
14 owned -- majority owned by First Reserve, which is a private
15 equity fund down in Houston that focuses on the energy sector.
16 This is a much more typical structure holding company with
17 operating subsidiaries. And the debt -- the capital structure
18 of Sabine, pre-combination, was 619 million dollars of first
19 lien debt, 650 million dollars in second lien debt and 350
20 million of the 2017 notes and those are the notes that Akin
21 Gump is representing. Okay. So that's pretty simple.

22 If you go to the sheet that says post-combination
23 capital structure as of December 16th. So the first page we're
24 looking at, I was kind of let's call it May of 2014 when the
25 company -- the two companies entered into a merger agreement.

1 From the time they entered into the merger agreement until
2 December, the commodity prices started to tumble, at first
3 slowly and then precipitously as we all are aware. And that
4 created a lot of challenges for getting the merger done. And
5 there were a number of changes as you read in the complaint to
6 get it to where the companies did actually merge despite Sabine
7 having a lot of second thoughts about a merger.

8 When the company merged, what you'll see is the first
9 lien, the RBL credit facility as we call it, now is 750 million
10 dollars. And that was due to a refinancing of the 105 million
11 dollars of Legacy Forest first lien and 619 million dollars of
12 Sabine first lien as well as some additional funds that went to
13 pay transaction costs.

14 The second lien which was 650 million is now at the --
15 when it's combined it's 700 million because the second liens
16 put in an additional 50 million dollars of funding. And then
17 the unsecured notes were made as they were.

18 Another thing to point out with the RBL credit
19 facility is there was a two billion dollar credit facility. We
20 had a billion dollars of borrowing base and we had 750 million
21 outstanding.

22 If you jump to the third page, which is capital
23 structure as of today, what you'll see as the only difference
24 is there's now 927 million dollars approximately outstanding
25 under the RBL credit facility. And I want to talk about that.

1 In, I think, March, the company made the decision to
2 draw down on the entire amount of the facilities so an entire
3 billion dollars. The reason it's not a billion dollars
4 outstanding is because to the petition date, we had a number of
5 swaps that were unwound and then set off by the banks. So
6 that's why we're at 927.

7 In addition, when we borrowed and drew down on that
8 revolver, we had the -- we did not have an obligation to put
9 those monies into control accounts. So we put them outside of
10 the banks. And the company's view was that was unencumbered
11 cash. The company did that for purposes of flexibility,
12 optionality, all the things that you can imagine.

13 The first lienholders dispute that that cash is
14 unencumbered. They have a number of arguments about why they
15 believe that it's encumbered. And those are arguments that at
16 least the company and the first lienholders and the second
17 lienholders as a -- they did not want to fight. We wanted to
18 kind of push that off and reserve everybody's rights to fight
19 that at a later date if it even had to be -- has to be fought.
20 But that is going to be part of what you're going to hear about
21 today from --

22 THE COURT: Right. But as far as the first liens and
23 second liens are concerned, it's agreed as of -- usage is
24 agreed as of now.

25 MR. HENES: Yes.

1 THE COURT: Okay.

2 MR. HENES: Yes. The cash collateral order that you
3 have in front of you today is fully consensual between the
4 companies --

5 THE COURT: Company, firsts and seconds.

6 MR. HENES: -- the first liens and the second liens.

7 THE COURT: Okay.

8 MR. HENES: So we drew down on that money.

9 Another interesting thing in the oil and gas world is
10 there is these redetermination periods of the borrowing base.
11 It happens in April and October. So in April, there was a
12 redetermination and the banks redetermined the borrowing base
13 from a billion dollars to 750 million dollars. So as a result
14 of that, because we have borrowed everything down, the company
15 now owed 250 million dollars to the bank, the two forbearance
16 agreements and other things, we did not make those payments and
17 those payments are still outstanding which is why we have the
18 927.

19 The last thing to note in this case is -- or not the
20 last thing but important thing is also in the oil and gas
21 world, rather than taking a lien on substantially all of the
22 company's assets, generally banks take a lien on 80 or 90
23 percent of the assets. And the reason for that is, they get a
24 lien on the mineral rights. If you get that lien, you have to
25 have a properly filed mortgage. And because there is property

1 all over, it's very time intensive and expensive to go get
2 mortgages, so they'll take a mortgage on the most valuable
3 properties at the time, the ones that are producing, the ones
4 that they know are going to be producing, but they'll leave
5 some. So there are unencumbered assets here and everybody
6 agrees they're unencumbered. So no matter what, there's going
7 to be some value for unsecured creditors in these cases.

8 Okay. The other thing to note about this is
9 because -- and I think -- I don't know if this is unique but
10 it's definitely unusual for a merger to close in December and
11 have Kirkland & Ellis hired in February as restructuring
12 counsel and Lazard and Zolfo come in. Because of that, what
13 we've been hearing and we've been looking at, basically since
14 day 1 since we got involved was about potential claims that
15 could be brought against all sorts of parties for fraudulent
16 transfer, breach of fiduciary duty. You name it, people have a
17 theory on a claim. What the board of directors and company
18 decided and Kirkland & Ellis advised was that we should dive
19 into these claims and look at them but that it should be
20 directed by what we'll call independent directors. So
21 directors who had nothing to do with the merger, nothing to do
22 with Sabine or Forest pre-combination.

23 THE COURT: So before you get to the special committee
24 and the investigation, it's a board of directors that you have
25 depicted, nothing on the pre-combination. Is the board

1 comprised of directors from each side of the -- from each of
2 the merger parties?

3 A. Uh-huh, it is. Now you have -- on the board of directors,
4 you have board members from -- and for pre-Sabine --

5 THE COURT: Forest. Pre-Forest.

6 MR. HENES: -- pre-Forest --

7 THE COURT: Okay.

8 MR. HENES: -- and First Reserve. There was one
9 director, though, a Thomas Chewning who was put on when the
10 companies were combined so he was not involved prior to the
11 combination. Had nothing to do with the merger, nothing to do
12 with Sabine, nothing to do with Forest. So we spoke to him
13 first. And in terms of a special committee or -- you are
14 independent. And he was willing to take on the role of looking
15 at these claims. We made the decision that we thought bringing
16 somebody else on would make sense, too, so we had more than one
17 person on the committee. And we brought John Foster on -- and
18 we have him listed on the capital structure as of the petition
19 date. And Mr. Foster has a lot of experience and restructuring
20 to being on boards so he's part of that committee as well. And
21 we have been reviewing all of those claims. We're not
22 completely done with our analysis of everything but we think we
23 have a very good process in place. And one of the reasons we
24 want that is to keep control, as much control as we can here
25 because, again, if this develops into litigation, this is not

1 the type of company that can sit through a long drawn out
2 litigation case. We need to get this company out as quickly as
3 we can.

4 And so, whether it's claims that we brought, like the
5 first complaint that we filed, whether it's a new claim that we
6 bring later or whether it's defending against people seeking
7 standing or even agreeing that somebody else should bring a
8 claim, it's going to be well thought out by this independent
9 committee and we will have reports before you to review and
10 look at.

11 Okay. So that's kind of where we are. So before I --
12 and then I'm going to sit down and turn it over to Mr. Marcus
13 now. But at the end of the day, and I know I've said this but
14 just I want to be crystal clear from the company's perspective,
15 we get that there's a lot of issues. We know there's a lot of
16 parties looking at them. We are looking at them very carefully
17 as well. We're hopeful that everybody here, even if they can -
18 - we can all agree to disagree but if we do disagree and need
19 to have litigation, we're hopeful that everybody will agree on.
20 Let's make that as -- that litigation as efficient and
21 expeditious as possible and be able to bride Your Honor with
22 the easiest way to resolve those so then we can move on t the
23 main event which is really how do we get this company out and
24 who's going to own the company.

25 THE COURT: So in many cases, there aren't significant

1 creditors beyond the noteholders. In this case, it appears,
2 based on my review, that there is a substantial body of
3 ordinary creditors.

4 MR. HENES: There are.

5 THE COURT: Is there anything that you can say about
6 that, their involvement, how they're situated, just generally,
7 the company's perspective and the constituencies' perspective
8 on that.

9 MR. HENES: Sure. The other creditors, and there are
10 some larger creditors as you saw on the top 50 list, I mean,
11 those are much more operational creditors.

12 THE COURT: Yes.

13 MR. HENES: We deal with them on a day-to-day basis.

14 THE COURT: Right.

15 MR. HENES: And I think some of them will want to sit
16 on the creditors' committee but they have not yet been involved
17 in any restructuring discussions and I don't see them on an
18 individual basis being involved. So other than sitting on a
19 committee, I don't see much involvement.

20 THE COURT: All right.

21 MR. HENES: Okay?

22 THE COURT: Okay. What would you like to do next?

23 MR. HENES: I would like to turn it over to Mr. Marcus

24 --

25 THE COURT: Okay.

1 MR. HENES: -- let him continue on. Thank you, Your
2 Honor.

3 MR. MARCUS: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. MARCUS: For the record, Christopher Marcus from
6 Kirkland & Ellis, proposed counsel for the debtors.

7 Your Honor, let me first start with just the joint
8 administration motion.

9 THE COURT: Okay.

10 MR. MARCUS: I think we come -- people typically come
11 and do that first. We have ten debtor entities here. We're
12 going to procedurally consolidate them under the caption for
13 Sabine Oil & Gas Corporation. Very standard joint
14 administration. We showed it to -- we've shown it to everybody
15 including the Office of the United States Trustee. And I
16 believe that there are no issues with that motion, Your Honor.

17 THE COURT: Doe anyone wish to be heard with respect
18 to the debtors' motion for joint administration of these
19 Chapter 11 cases? All right. Very good. That'll be entered.

20 MR. MARCUS: Thank you, Your Honor. We will just
21 deliver --

22 THE COURT: I think at the conclusion --

23 MR. MARCUS: Yeah.

24 THE COURT: -- e-mail everything that we arrive at
25 today. You can e-mail it to chambers.

1 MR. MARCUS: Terrific. Thank you.

2 THE COURT: Or discs if you have them, whichever is
3 easiest for you.

4 MR. MARCUS: Thank you. Your Honor, I want to turn to
5 the cash collateral motion and order.

6 THE COURT: Okay.

7 MR. MARCUS: Mr. Henes mentioned the affidavit of Mr.
8 Magilton, the company's chief financial officer which was
9 submitted in connection with all of the first day motions
10 including cash collateral, a cash collateral specific -- a lot
11 of -- obviously, the background and working capital needs are
12 scattered throughout but the cash collateral specific
13 paragraphs can be found at pages 34 to 37. I should also note,
14 Your Honor, that at docket number 45 is the affidavit of Jordan
15 Searles from Prime Clerk which walks through who -- all the
16 first day pleadings including, obviously, most importantly, the
17 cash collateral motion have been served on. And so, that
18 supports the notice paragraphs

19 THE COURT: Okay.

20 MR. MARCUS: -- within the proposed interim order. I
21 would just like to note, Your Honor, on page 3 of the inter --
22 Your Honor has a copy of the interim order, correct, as well as
23 the budget?

24 THE COURT: Give me a second. Let me get there. All
25 right. I'm there. I think at docket 9, it's page 37 of 80.

1 MR. MARCUS: And does Your Honor have the -- I don't
2 know if I'm going to be relying on the budget, but just in
3 case, I wanted to make sure you do have a copy. It should be
4 attached to the motion itself.

5 THE COURT: Budget is attached, right?

6 MR. MARCUS: Great. Yes. No changes to that since it
7 was filed as well.

8 Your Honor, on page 3 of the interim order at the very
9 top, it actually says that the debtor served the 30 largest
10 unsecured creditors. We will fix that in the order we served
11 the 50 largest unsecured creditors.

12 THE COURT: That's --

13 MR. MARCUS: That was really the only typo that I
14 believe that we have.

15 Your Honor, what I'd like to do is, I'd like to talk a
16 little bit about the I would say somewhat unusual paragraphs
17 that we were able to negotiate or provisions --

18 THE COURT: Okay.

19 MR. MARCUS: -- that we were able to negotiate as part
20 of this interim order. And then I'd like to walk through some
21 of the other, I think, important things that local Rule 4001-2
22 would require us to call out. Otherwise, just to give Your
23 Honor a kind of full understanding of how the cash collateral
24 order works.

25 THE COURT: Okay.

1 MR. MARCUS: As Mr. Magilton states in his
2 declaration, this was a good faith, arm's length, hard-fought
3 long negotiation with the pre-petition lenders. You can
4 imagine that the pre-petition lenders were not happy with the
5 fact that we believe that all of our substantially -- all of
6 the cash that's sitting in the debtors' operating account right
7 now is not part of their collateral package. You can also
8 imagine that they weren't happy with the fact that the debtors
9 were not -- had not yet completed their review with respect to
10 many of the lien rights that the lenders have, both the first
11 lien and the second lien lenders. You know, as even Mr. Henes
12 discussed, we've already commenced an adversary proceeding with
13 respect to the second lien lenders. And so, as part of this
14 negotiation, the debtors were very keen on reserving rights
15 with respect to stipulations that I think you'd normally see.
16 The cash is their collateral. The liens are all good. So we
17 stipulated to the validity of their claims and the priority of
18 their liens and all that. What we did, in paragraph 11 and
19 paragraph 23(a) and (b), Your Honor, reserved some very
20 important rights for the estate. 11 relates to the debtors'
21 right to argue that a cash in the operating account is not cash
22 collateral. And we've called that -- because it's not
23 unencumbered yet, we've called it disputed. As the case
24 progresses, there undoubtedly will be cash collateral. Your
25 Honor can see from the budget in the first two weeks, I think

1 there's about 46 million dollars of proceeds that come in that
2 we think is largely or all cash collateral, proceeds to the
3 (indiscernible) collateral. So there is cash -- even if we're
4 successful on the disputed cash, there is cash collateral usage
5 necessary here. And so the order itself governs the use of all
6 that cash, Your Honor.

7 Paragraph 11 provides that we will have the
8 opportunity to contest that the liens extend to the cash. It
9 also sets forth a number of uses for the disputed cash. And
10 then between paragraph 11, 12 and 13, it kind of sets up a
11 mechanism for segregating cash collateral from the disputed
12 cash. And we'll use some of the disputed cash for certain
13 items and some of the cash collateral for other items.

14 I want to come back to that in a little bit when we
15 talk about adequate protection, the package itself. But I
16 wanted to kind of give you the overview of paragraph 11 which
17 was an extremely important paragraph for us.

18 Your Honor, and then, as I foreshadowed --

19 THE COURT: Can I ask a question that --

20 MR. MARCUS: Of course.

21 THE COURT: So specifically, in paragraph 11, now that
22 you've focused me on this reservation of rights, and disputed
23 cash -- and the defined term, "disputed cash", the penultimate
24 sentence in paragraph 11 says "The Debtors and the First Lien
25 Agent (on behalf of the First Lien Secured Parties) reserve

1 their respective rights to assert claims or seek any other
2 relief with respect to the Disputed Cash."

3 MR. MARCUS: Yes.

4 THE COURT: So is that specifically and purposefully
5 to the exclusion of other parties?

6 MR. MARCUS: It is --

7 THE COURT: -- having those rights or is it that the
8 only conceivable party that could have a right that could be
9 asserted with respect to the disputed cash is the first lien
10 agent?

11 MR. MARCUS: It is not intended to be read that other
12 parties do not have any rights. They have whatever rights they
13 have.

14 THE COURT: They have whatever rights they have.

15 MR. MARCUS: Whatever rights they have. They believe
16 they can go and get standing to bring an action against the
17 lenders, they can -- there's nothing in here that says people
18 can't file STN motions or try to get standing. This is
19 merely -- because typically debtors stipulate to this stuff.

20 THE COURT: Sure.

21 MR. MARCUS: And we wanted to make sure that we --
22 that it's clear that we're reserving our rights and obviously
23 Ms. Schonholtz wanted to make sure as well that she was
24 reserving her rights as well.

25 THE COURT: Okay.

1 MR. MARCUS: This is not intended to be read --
2 nothing in this order is intended to be read that people can't
3 file standing motions.

4 THE COURT: Okay.

5 MR. MARCUS: I think I was going to paragraph 23.

6 THE COURT: I'm sorry. I interrupted. I interrupted
7 you.

8 MR. MARCUS: No, no. That's okay. Please. I'm happy
9 to answer the questions.

10 Paragraph 23. 23(a) relates to the post-merger first
11 liens. And paragraph 23(b) relates to the post-merger second
12 liens. You've seen the adversary proceeding commenced in
13 connection with 23(b) but a similar investigation continues
14 with respect to the first liens. There are some different
15 facts and circumstances that make the claims different and so
16 we continue to do that investigation, Judge.

17 Let me talk a little bit about some of the other kind
18 of 4001 type provisions to be called out. And let me start
19 with the adequate protection itself. This begins on page 18 of
20 the interim order, Judge. Adequate protection liens, they're
21 senior to all other liens save the carve-out. Other than
22 existing liens 'cause obviously we're not priming -- there's no
23 lien priming. Adequate protection claims, superpriority claims
24 again, subject only to the carve-out. Adequate protection
25 payments will be made in an amount equal to what would be

1 interest at the applicable rate. No one's reserving their
2 rights on default interest.

3 Covenants to maintain the cash management system, pay
4 the fees and expenses. I would kind of just jump ahead real
5 quick. For the second liens, we're giving them replacement
6 liens as well as paying fees and expenses as well and they get
7 to piggyback on the reporting requirements and they get to --
8 for the first liens.

9 The -- as I said, fees and expenses. The reporting
10 requirements are set forth in paragraph (f) that the company
11 found was reasonable and with Zolfo Cooper's help, we will
12 comply.

13 (g) is the application of swap proceeds. Most of the
14 swap agreements, a lot of these hedge agreements have already
15 been terminated. There are a few left. To the extent that
16 those remain in place in the ordinary course and payments are
17 made -- or actually, we get to keep those and use those as cash
18 collateral. To the extent that they roll off to pay down to
19 the lenders. And then the asset sale provision, in paragraph
20 (f) -- I'm sorry paragraph (h) on page 23 -- this is -- kind of
21 parallels 363(f)(2) with respect to consent rights. We
22 actually thought this is good because sometimes lenders will
23 come in and say we want a paydown if you go out and sell it.
24 And here, we get to kind of keep it. It's cash collateral but
25 we get to kind of keep it. And so it kind of transfers a lien

1 to the proceeds of the sale so that was a good resolution.

2 And then, I think when we were talking about payments,
3 we should go back to paragraph 11 and paragraph 12 and 13. 13
4 just talks about the use of the segregated cash collateral.

5 And so here, Your Honor, there's really sort of four
6 buckets of cash that we're going to use. By the way, not all
7 of which will even be used in the interim period. So another
8 kind of checkmark in parties' rights are kind of reserved.

9 There are restructuring fees to be paid for the
10 administration of the case. This form of order has them being
11 paid from the disputed cash; however it will be no
12 restructuring fees paid in the first -- in the interim period.
13 We probably won't even be filing fee applications in the
14 interim period.

15 There is an adequate -- one adequate protection
16 payment that will be made. Your Honor can see that in week 2
17 of the budget, about 3.7 million dollars which will come out of
18 the disputed cash.

19 THE COURT: Hold on. It's struggling with the font.

20 MR. MARCUS: Yes. It's finding -- you know, these are
21 a little bit better. I have color copies if you'd like. It
22 actually shows up a little bit better than the photocopies.

23 THE COURT: Just help me zero in on the line.

24 MR. MARCUS: So across the top, "Week 2" --

25 THE COURT: Yes.

1 MR. MARCUS: -- and then work your way down to nearly
2 to the bottom. You see -- well, actually, the row is titled
3 "Interest payments and fees" --

4 THE COURT: Got it.

5 MR. MARCUS: -- "3.780" --

6 THE COURT: Okay.

7 MR. MARCUS: -- and change. I understand that there
8 may be some kind of stub amount of fees of person first lien
9 lender counsel to be paid as well. Perhaps second lien counsel
10 as well. I'm not sure that that's material but that's really
11 what we're talking about in terms of those adequate protection
12 payments.

13 The third bucket is G&A expenses, proper any business
14 wages. Actually, what we have in here was -- there's no
15 perfect way to allocate, to be honest. There isn't a perfect
16 way to allocate the GMA. And so what we agreed in here we
17 thought was great for reserving people's rights is it's going
18 to kind of disputed cash but there's a reservation of rights --

19 THE COURT: Sure.

20 MR. MARCUS: -- with respect to further negotiations
21 so we can hopefully come up with a consensual way to allocate
22 that across. Obviously, if it's all cash collateral then this
23 becomes moot. And if we resolve it some other way, this
24 probably becomes moot as well. But if we have a fight there's
25 sort of a mechanism to argue later on.

1 THE COURT: Okay.

2 MR. MARCUS: And then, of course, there's operating
3 expense -- capital expense -- sorry -- capital expenses and
4 lease operating expenses related to the operation of the
5 business and the expenses related to the pre-petition lender's
6 collateral will come out of cash and the expenses related to
7 operating the unencumbered collateral will come out of the
8 disputed cash. So the lenders have agreed to that. We thought
9 that that was about as fair as you can get with respect to the
10 operation of the business and trying not to have 506(c) fights
11 later on.

12 So -- paragraph 12 talks about the debtors segregating
13 into a separate account. The cash collateral -- I'm going to
14 do this very quickly, Your Honor, so as not to get bogged down
15 in the accounting. But effectively, the way we're going to
16 figure out how much cash was used -- how much cash collateral
17 was used to operate the encumbered assets, it's effectively
18 going to be an accounting exercise. So for example, for July,
19 the monthly financials would be produced in August. By mid-
20 September, we will have kind of on a well-by-well income
21 statement basis figured out how much should be allocated. And
22 then retroactively to the petition date kind of separated. So
23 it's going to be done later but will be tracked from day 1 of
24 the case.

25 THE COURT: Okay.

1 MR. MARCUS: The next paragraph I just wanted to point
2 out, Judge, is paragraph 15 on page 34. That is the 506(c)
3 waiver paragraph. Obviously very important and it was very
4 important to the U.S. trustee when we spoke to Mr. Schwartzberg
5 as well. This is subject to entry of a final order. So there
6 is no 506(c) waiver being given under this order.

7 I think I have one more. Yes. One more which is
8 paragraph 29, Your Honor, on -- well, I guess I should point
9 out just to be -- trying to be consistent with 4001. This
10 paragraph 10 on page 28 is the termination paragraph. There
11 are 15 different termination rights. There are certain ones
12 that require cash collateral terminated immediately and certain
13 ones that require lenders to give us notice with a five-day
14 grace period to either cure or come in and move for Your Honor
15 to be allowed to continue to use that. We obviously felt
16 comfortable with these -- the ones that are immediate are
17 largely ones where we'll have some notice or are in the
18 debtors' control. So we thought it was -- this was typical and
19 we were comfortable with it.

20 THE COURT: Okay.

21 MR. MARCUS: And then, Your Honor, back to paragraph
22 29 on page 41. This is the equities of the case waiver under
23 Section 552(b). Again, I really wanted to point out that there
24 is no 552 waiver under this order. It is subject to the entry
25 of the final order. So status quo for the interim period.

1 Your Honor, I mentioned Mr. Schwartzberg. We did
2 provide this order --

3 THE COURT: Okay.

4 MR. MARCUS: -- to the Office of the United States
5 Trustee. He had maybe six or eight comments. We resolved all
6 of those consensually.

7 THE COURT: Okay.

8 MR. MARCUS: I don't believe that he has any
9 objections to the form --

10 THE COURT: All right.

11 MR. MARCUS: -- of the order. Obviously, we have the
12 consent of the first and the second lien lenders as well. We
13 did receive an informal -- not objection but an informal
14 request for a clarification from one party. And I have the e-
15 mail. I thought I had it with me. Give me just one second.

16 (Pause)

17 MR. MARCUS: From Mr. Melko who represents Hartz
18 Capital. They're a non-operating working interest owner and
19 they just wanted a clarification effectively that if there's
20 cash it's not property of the estates. They're not allowed to
21 put a lien on it which is, of course, true. So let me just
22 read the clarification for Mr. Melko's benefit. And it -- as
23 set forth in the working interest/royalty motion, the debtors'
24 position is that the proceeds of third parties' working
25 interest/royalty interests are not property of the estate even

1 though those funds may be temporarily held in the operating
2 account. To the extent those funds were received pre-petition,
3 they may fall within the term of "disputed cash" as currently
4 defined. The debtors do not intend to use third party-owned
5 cash in the debtors' operations nor grant a lien to the lenders
6 on those funds as working interest disbursements and royalty
7 payments are received post-petition.

8 THE COURT: Okay. I should have also noted at the
9 outset that I do have four pages of parties who are on the
10 phone with us here. The great majority of them are in listen
11 only mode but there are a number of parties who are listed in
12 live mode. I'm not going to take the time to go through and
13 identify everybody who has appeared. We did grant across the
14 board permission to hear telephonically for this hearing.

15 MR. MARCUS: Great.

16 THE COURT: So you filled up with suspense as to what
17 it is that Mr. Qureshi is going to tell me when he stands up to
18 object.

19 MR. MARCUS: I think he's good with the order. I
20 think he told me he was good with the order, no?

21 Let me just very quick -- I don't know if anybody else
22 wants to speak in favor. We have a ton of people in favor of
23 this order, Your Honor, who might want to speak as well. Not
24 sure but the important point in closing here, Your Honor, is
25 that we have uncontested access to funds which may be cash

1 collateral. We think we have some arguments. And lenders
2 certainly believe that they have some arguments. But those are
3 not, thankfully, those are not arguments for today. It is,
4 obviously, critical that the company has for all the other
5 motions as well, for employees, for vendors, for, you know, the
6 public to know that we have access to the cash and that this
7 business is going to continue to operate. It pushes off
8 fights. It preserves rights. We don't think that we're
9 prejudicing anybody's rights in here as I've walked through.
10 And so, you know, as Mr. Magilton testified in his first-day
11 declaration, Your Honor, that the entry of this order is in the
12 best interest of the estate and I would ask Your Honor to --

13 THE COURT: All right. Thank you, Mr. Marcus.

14 MR. MARCUS: Thank you.

15 THE COURT: All right. I'll hear from those who want
16 to add anything in support of the entry of the cash collateral
17 order.

18 MS. SCHONHOLTZ: Good morning, Your Honor.

19 THE COURT: Good morning, Ms. Schonholtz.

20 MS. SCHONHOLTZ: Margot Schonholtz, Willkie Farr &
21 Gallagher, on behalf of Wells Fargo, the agent for the first
22 lien RBL lenders. And I'm joined here today by Ana Alfonso and
23 Penny Jenson.

24 And you heard the lender group is owed as of today 927
25 million dollars, 900 in loans and is it 26 or so million dollar

1 LC also outstanding. This is a reserved base loan secured by
2 substantially all of the debtors' Wells sides and leases
3 together with other personal and real property.

4 Now in connection with the merger in December of 2014,
5 Wells and this lender group actually refinanced in full the
6 existing first lien debtor both at Sabine and at Forest with a
7 new two billion dollar revolving -- an RBL facility. The
8 initial draw under that new facility at the closing date was
9 751 million dollars. Subsequently, there was a partial
10 paydown. But as you referred earlier, on February 25th, the
11 debtors drew the balance of the RBL which is a 356 million
12 dollar draw.

13 Importantly, Your Honor, all of the proceeds of that
14 draw were placed in the debtors' main operating account where
15 they were comingled with the proceeds of the first lien
16 collateral -- undisputed proceeds of the first lien collateral.
17 Proceeds of the first lien collateral from the operating
18 assets, if you will, flow into that account every day. And the
19 draw was not placed in a segregated account; it was all
20 comingled.

21 The new RBL was and is secured by, among other things,
22 mortgages, on Sabine properties that were granted in connection
23 with Sabine's pre-merger facility. And liens and mortgages
24 placed on Forest's assets from the closing date through about
25 February 17th, as is customary, there was a 60-day post-closing

1 period to enable the new liens to be put on.

2 Within approximately a week of the liens being put on
3 the bulk of the Forest assets, the debtors drew down the 356
4 million dollars.

5 The credit agreement, as you heard, also provides for
6 scheduled borrowing base redeterminations twice annually, once
7 in April and one in October. And as of April 27, 2015, the
8 borrowing base supporting this loan was 750 million dollars.
9 So upon the redetermination, the company was required to repay
10 250 million of the billion dollars outstanding which it did not
11 do.

12 The first lien lenders entered into an agreement to
13 forbear with respect to that default and other existing
14 defaults through July 15th which brings us here today. And
15 subject to being granted the adequate protection provided for
16 in this interim order, the first lien lenders are willing to
17 let their collateral which we assert, of course, includes the
18 disputed collateral, finance the debtors' ongoing businesses
19 and to finance its case. As the debtors' counsel noted, we
20 contend that virtually all of the cash in the operating account
21 as of the petition date, which is about 250 million dollars, is
22 cash collateral and/or proceeds of the pre-petition collateral
23 in which the first lien agent has a valid perfected security
24 interest on behalf of its lending group.

25 In addition, the funds may be subject to a constructed

1 trust for a variety of reasons we don't need to get into today.
2 And we also believe that the lowest intermediate balance test
3 will need to be applied here because of the comingling and
4 we'll demonstrate when we get to that issue, if we need to,
5 that substantially all of the cash belongs to this lender
6 group.

7 The debtors and the first lien lenders have reserved
8 all their rights. We obviously concur with the debtors that a
9 massive battle of that nature would not be helpful to this case
10 at the outset. And so, we have all reserved rights with
11 respect to the disputed cash. But I wanted to be clear to Your
12 Honor that we have valid and serious arguments as to why that's
13 our cash collateral. This is not a frivolous grap.

14 Pursuant to paragraph 11, 12 and 13, as Mr. Marcus
15 pointed out and importantly subject to the budget which has
16 been agreed and is attached to the cash collateral order, the
17 lenders have agreed to let the debtors use both disputed cash
18 and segregated cash to fund their businesses and this case.
19 All of the expenditures are subject to the budget no matter
20 where they're sourced. And just a quick clarification, the
21 adequate protection payments is -- for the lender is at the
22 contract rate which is ABR plus 150 basis points at this point
23 in time. We are reserving on the default spread.

24 There is also going to be a small stub advisor fee
25 piece payable during the interim period which were our pre-

1 petition fees. It's built into the order here. And other than
2 the adequate protection payment and that small stub, we don't
3 believe there will be other payments made during the interim
4 period other than to operate the business which is, of course,
5 necessary.

6 From our perspective, what's important also about this
7 agreement is, as you will hear later, the debtor seeks to make
8 significant payment to royalty owners, working interest owners,
9 other people at the outset of the case which, frankly, is
10 somewhat unusual in terms of the magnitude during interim
11 period. We are willing to accept that. Obviously, our
12 position is that our cash is being used to do it whether it's
13 in the disputed cash or segregated cash. But, of course, we
14 would need adequate protection and the entry of this order.

15 It is fair to say I could not agree more with my
16 colleagues at Kirkland that this was a very hard fought long
17 negotiation with respect to a cash collateral order. It
18 lasted, frankly, six weeks. We are thrilled to have a
19 consensual order. We appreciate Mr. Schwartzberg's efforts to
20 sign on as well. And we would respectfully request Your Honor
21 enter the order as we've requested.

22 THE COURT: All right. Thank you very much.

23 MS. SCHONHOLTZ: Thank you.

24 THE COURT: Good morning.

25 MR. HERMAN: Good morning, Your Honor. Brian Herman

1 from Paul, Weiss, Rifkind, Wharton & Garrison on behalf of
2 Wilmington Trust, the second lien agent.

3 Your Honor, we're supportive of the cash collateral
4 order although we weren't as intimately involved as Ms.
5 Schonholtz over the last six weeks, we did get drafts and did
6 have an opportunity to comment on it. And I think the
7 resolution that's been reached is apparently an elegant one and
8 I think worthy of being approved today.

9 Like the RBL lenders, Your Honor, we also entered into
10 forbearance agreements prior to the petition date and worked
11 with the debtors on trying to put together what we would like
12 to say which is a consensual restructuring outcome here. We
13 actually agree with Mr. Henes that this is not the kind of
14 company that can sustain a prolonged Chapter 11 case. And we
15 were very proactive in terms of putting forth a restructuring
16 proposal to the debtor. So I'm very hopeful that we can move
17 this case forward in a constructive way.

18 I suppose under the heading of no good deed goes
19 unpunished, we did receive a complaint. That complaint was
20 given to us slightly in advance of the filing on the evening of
21 the 14th. I don't believe we've been formally served with the
22 complaint but we do look forward to receiving it. We have been
23 in touch with Mr. Henes about scheduling -- a scheduling order
24 that would move that litigation ahead expeditiously. To be
25 perfectly frank, Your Honor, we think that the litigation has

1 absolutely no merit. So we welcome the opportunity to move it
2 forward and that will likely be through a prompt filing of a
3 motion to dismiss because we think that we have very good bases
4 upon which to get the claim dismissed. We don't have to go
5 into that today but I did want to make you aware of that.

6 THE COURT: All right. We're going -- first we're
7 going to focus on what we're going to focus on today which is
8 cash collateral, keeping the business running. But before you
9 will leave, I do want to have a conversation about exactly that
10 topic. Following up on what everybody has said, I'm going to
11 need to hear your collective thoughts about what happens next
12 because there are alternatives that, you know, seemed obvious
13 to me from immediately gearing up, if you will, and scheduling
14 a litigation whose outside the context of getting -- at least
15 my getting an understanding of what the case is going to look
16 like. So obviously, everyone has the rights that they have but
17 I want to have that conversation and hear your preliminary
18 thoughts today.

19 MR. HERMAN: That would be great, Your Honor. Thank
20 you. So in terms of cash collateral, we are supportive.

21 THE COURT: Okay.

22 MR. HERMAN: Thank you, Your Honor.

23 THE COURT: Very good. Thank you.

24 MR. QURESHI: Good morning, Your Honor.

25 THE COURT: Good morning. How are you, Mr. Qureshi?

1 MR. QURESHI: For the record, Abid Qureshi, Akin,
2 Gump, Strauss, Hauer & Feld here with my partners, Mike Stamer
3 and Phil Dublin. And, Your Honor, we represent the Bank of New
4 York in its capacity as trustee for the 2017 notes. Those are
5 the legacy Sabine notes.

6 Your Honor, the way I would propose, subject, of
7 course, to Your Honor having a different view, proceeding is to
8 conduct some very limited cross-examination of Mr. Magilton as
9 it relates to cash collateral. And then turn it over to my
10 partner, Mr. Stamer, who will make the argument.

11 THE COURT: Okay. Can you give me a --

12 MR. QURESHI: A preview.

13 THE COURT: -- Highlights for Children --

14 MR. QURESHI: Sure.

15 THE COURT: Are we talking about --

16 MR. QURESHI: That's --

17 THE COURT: Are we talking about particular uses of
18 cash or are you talking more about the overall of restructure
19 that by all accounts seem to have been highly negotiated?

20 MR. QURESHI: I'm happy to give Your Honor a preview.
21 I think it comes in two parts. Fundamentally, our position is
22 that we don't need to be having this hearing today. And the
23 reason that is our position is that there are plenty of
24 unencumbered assets available, first of all, to get the debtors
25 through the next 30 days of this case in an ordinary course

1 way, and to provide adequate protection to the extent of any
2 diminution in value of any assets that might be the collateral
3 of the secured lender. There are a ton of provisions in this
4 order, Your Honor, that we don't think are appropriate for an
5 interim order at all. And, frankly, Your Honor shouldn't have
6 to deal with today. So our argument is put it off. We don't
7 need it. There's a way to protect the secured lenders if, in
8 fact, they are secured with respect to the cash and to get the
9 lenders through -- the company, rather -- through the next 30
10 days and we can then have this argument in a more reasonable
11 context when everybody has the chance to prepare. We have the
12 chance to take discovery and hopefully we have the chance to
13 have some constructive discussions to try to resolve it. To
14 the extent --

15 THE COURT: What's the -- given the way that the cash
16 collateral order, at least preliminarily, to me reads and the
17 way it's been described by those who spoke before you, what's
18 the harm in entering the cash collateral order which, in great
19 measure, simply seeks to maintain the status quo with respect
20 to the parties' rights and grant maximum stability to the
21 operations. You know, I always how somebody's being hurt.

22 MR. QURESHI: Of course. And Mr. Stamer will go
23 through the details of the order that are particularly
24 problematic. But at a high level, Your Honor, first of all, it
25 flips the burden. You heard from Mr. Henes the debtors' view

1 that the entire balance in the operational account, 250 million
2 dollars, is not cash collateral, that it is, in fact,
3 unencumbered cash. And yet, the entire structure of this
4 order -- it reads, frankly, more like a DIP order. It reads as
5 though in return for new money coming in for lenders, they're
6 given a bunch of protections. And we think those protections
7 in this case are fundamentally inappropriate because, in fact,
8 the cash is unencumbered. And what should happen here is there
9 should not be, as this structure sets up, a reversal of the
10 burden, that, in effect, starts with an acknowledgment by the
11 debtors that this is properly perfected collateral of the
12 secured lenders and then leaves for 30 days later a fight where
13 the debtors -- yes, they reserved their right to object and
14 establish otherwise, in other words, shift the burden, and puts
15 other parties in the same position. So fundamentally, we just
16 don't think that it's appropriate to go forward now. And there
17 is some very real prejudice. And if Your Honor prefers, Mr.
18 Stamer can get up now and walk Your Honor through many of the
19 details of the order that are particularly problematic. We can
20 proceed how ever Your Honor prefers.

21 THE COURT: Well, maybe it makes sense to do it in the
22 order that you suggested.

23 MR. QURESHI: Sure. And I think the cross will be
24 quite limited.

25 THE COURT: All right.

1 MR. QURESHI: Okay.

2 MR. MARCUS: Your Honor, first of all, I'll introduce
3 my partners, Gabor Balassa who is --

4 MR. BALASSA: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. MARCUS: -- who would do (indiscernible). I think
7 we would ask Your Honor if we could just take a two minute
8 break. I think he'd like to then -- if we're actually going to
9 do this, I'd like to call Mr. Magilton on the stand and have
10 him do just a couple of statements in direct.

11 THE COURT: Okay.

12 MR. MARCUS: And then --

13 THE COURT: All right. We have the declaration in but
14 I think it would be helpful to hear briefly. So if you want --

15 MR. MARCUS: Sure.

16 THE COURT: -- to take a -- it's minutes before 12.

17 Why don't we try to resume at 12:00?

18 MR. MARCUS: Perfect, Your Honor.

19 THE COURT: All right?

20 MR. MARCUS: Thank you.

21 THE COURT: Okay. Thank you.

22 (Recess from 11:53 a.m. until 12:07 p.m.)

23 THE COURT: So I think I know the answer to this
24 question but I'll ask the question anyway. Would there be any
25 benefit to affording you an opportunity to talk to one another?

1 Mr. Stamer?

2 MR. STAMER: Your Honor, we're -- again, for the
3 record, Mike Stamer from Akin Gump for Bank of New York. Your
4 Honor, we're always happy to talk. As you heard a preview from
5 Mr. Qureshi and as you'll hear from me in more detail, there
6 are very significant fundamental issues with the cash
7 collateral order, the biggest of which is why are we here. Why
8 are we going forward with this.

9 THE COURT: Because -- we're here because Ms.
10 Schonholtz is going to stand up and is going to say the exact
11 opposite of what you are saying.

12 MS. SCHONHOLTZ: You are correct, Your Honor.

13 THE COURT: So I'm not trying -- I'm not trying to be
14 funny. But I think that we're here because it appears that
15 there is an attempt to achieve stability, a level playing field
16 and not prejudice anybody's rights. And if Mr. Qureshi's
17 characterizations were undisputed, you know, I would agree with
18 you. But I think that it's not. And therefore, in order to
19 avoid a context as we just begin this, it at least appears to
20 me that an attempt has been made to reserve everyone's rights,
21 get some stability and provide a platform for there to be
22 further discussions. And that where you're going seems to
23 require me to have to resolve some, if not many, of the
24 significant issues that we're going to face down the road two
25 hours into the case. So that's what I'm struggling with.

1 MR. STAMER: Your Honor, and I get it. And we're not
2 looking to burden the Court or take more time for the parties
3 than we need to. This is the first day of what will likely be
4 a very contentious Chapter 11 case. I'm sorry to say that
5 upfront. Maybe it won't be. And you, frankly, heard one side
6 of the story. And counsel for the company and the lenders did
7 an eloquent job of describing kind of from their perspective
8 what happened here and what's going to happen on a go-forward
9 basis. And I don't want to -- if I might.

10 THE COURT: Sure.

11 MR. STAMER: The bottom line is this company, over the
12 next 30 days, is going to spend 12 million dollars. They're
13 going to burn 12 million dollars of cash which the debtors
14 believe and we agree is all unencumbered. If you do not make
15 the -- if you don't approve the adequate protection payment,
16 they will make eight million dollars. They will burn eight
17 million dollars in cash. So, Your Honor -- and I can spend a
18 fair amount of time going into the specifics.

19 The bottom line is we are here before the Court for
20 two reasons. One is, the significant decline in commodity
21 pricing and the disastrous merger in 2014. The debtors have
22 already admitted -- they filed a suit against the second liens
23 that the parties were insolvent at the time. And the debtors'
24 view is, and they've set up an independent committee 'cause
25 they think they're the right ones. We'll figure out whether

1 they are -- that it was a fraudulent conveyance to grant liens
2 to the second liens. Our view, Your Honor, is you do not look
3 at this transaction in isolation. We believe that the
4 beneficiaries of the cash collateral order, the secured
5 lenders, they are going to be defendants. Full stop. They're
6 going to be defendants. And what this cash collateral order
7 does, in addition to clarifying or having the company waive
8 some rights to argue certain comingling stuff, it puts a finger
9 on the scale very significantly in favor of the secured lenders
10 to the detriment of the debtors and to the debtors' unsecured
11 creditors. This is not a --

12 THE COURT: On an interim basis?

13 MR. STAMER: Your Honor --

14 THE COURT: On a day 1 interim basis?

15 MR. STAMER: This is not your typical -- this is not
16 your typical Chapter 11 case. This is not your typical cash
17 collateral order. And with due respect, these are not your
18 typical first and second lien lenders.

19 This case -- the company -- again, maybe it's because
20 they wanted to have a smooth first day hearing. And I get
21 that. I -- smooth is better than not smooth. But at what
22 price? So if Your Honor would like, even before Mr. Qureshi
23 calls a witness, I can walk you through kind of our overall
24 concerns. I can point out to you kind of what the salient
25 facts are that the Court should, at the very least, be aware of

1 before Your Honor comes to a conclusion that this is the way to
2 preserve a status quo or there's a better way to preserve the
3 status quo. Our view: there's a better way. And the better
4 way is, again, don't approve the cash collateral order, the
5 motion. Give the banks -- what you'll hear in terms of
6 testimony is there's -- the debtors believe, and we agree, that
7 there's 250 million dollars of unencumbered cash. Okay?
8 Counsel for the first lien lender articulated a number of
9 arguments. We believe those are meritless and we think that
10 there's 250 million dollars of unencumbered cash. In addition,
11 I believe you'll hear testimony that there's an additional 100
12 million dollars of unencumbered reserves. So 350 million
13 dollars at the most, I think. And at the very least, the
14 debtors want -- the debtors think it's 350 but there's no
15 dispute with respect to there's at least a hundred because, as
16 I think you heard, the banks only get a percentage of the
17 reserve as their collateral.

18 So if you do not approve cash collateral today but you
19 give the banks replacement liens and 507(b) superpriority
20 claims and we spend 30 days -- we don't spend 24 hours because
21 that's all we had with respect to talking about the cash
22 collateral. We spend 30 days. No one can make a straight fact
23 argument that at least the 100 million dollars in unencumbered
24 reserves and most likely all or substantially all the 350, they
25 will have a replacement lien to the extent their collateral

1 diminishes in value during the 30 day period.

2 There's no reason for the banks, even on an interim
3 basis, to be given the kind of protections that they're given
4 here. This is not a DIP loan. This is -- it's ironic. It
5 is -- it's the use of cash collateral. Right? Allegedly, the
6 use of cash collateral. The vast majority of it, the debtors
7 believe and we agree is unencumbered. But if you look at the
8 pleadings, if you look at the cash collateral order, you will
9 see that notwithstanding there is a big slug of what we think
10 is unencumbered cash, the overwhelming majority of cash that's
11 being utilized to fund this case is coming out of that disputed
12 cash. So other than Capex and Opex directly related to their
13 collateral, their hard assets collateral, everything else --
14 everything else is coming out of what we believe, what the
15 debtors believe is unencumbered cash. At the same time --

16 THE COURT: But -- but --

17 MR. STAMER: Sure.

18 THE COURT: But hold on. I'd like to understand --
19 and I'm going to ask, Mr. Henes and Mr. Marcus, for your view
20 on how we do this. Net net, what do you believe is the cost --
21 the cost of entering the cash collateral for the interim
22 period, the cash money cost to the harm to you. Not the costs,
23 not the outlay of the money. But I'm trying to understand how
24 are you harmed. What's the cost?

25 MR. STAMER: Your Honor, it's a very good question.

1 We can --

2 THE COURT: But don't you think that -- but don't you
3 think it's a question that needs to be answered? Because if we
4 are at the start of a multi-billion dollar and before you
5 characterize it as such difficult and complicated case although
6 I would say it necessarily needs to go that way, and we're
7 talking about funding -- and again, that's why I asked the
8 question of whether you were going to be poking at particular
9 expenditures or taking issue with, generally speaking, the
10 structures because the debtors have explained in their papers
11 in the motion to pay the pre-petition wages, the working
12 interest disbursements and the operating expenses
13 (indiscernible) et cetera, they have explained in a great deal
14 of detail what the level of expenditures are, what the basis
15 for doing it is, all seemingly to me, subject to anyone's
16 rights to be heard in service of keeping things going. So I
17 don't want to cut you off. I'm happy to hear you. I'm happy
18 to hear the cross-examination but I'm still trying very hard to
19 understand specifically and in what order of magnitude you are
20 hurt by this order.

21 I understand your position that you think that it's
22 unencumbered cash. They don't.

23 MR. STAMER: Your Honor, we may need to actually talk
24 to the witness to answer this in greater detail. There's kind
25 of two or three costs. There's the hard cost of cash to the

1 extent that actually unencumbered cash is going out the door
2 for the benefit of the secured lenders that were allocating any
3 type of use of unencumbered cash to pay for the cost of these
4 estates which the first liens are a very significant
5 beneficiary of. So there's got to be -- over the next 30 days,
6 there's got to be a dollar and cents. On a net/net basis, the
7 cash, as we understand it, is going to depreciate. It's going
8 to go down by about eight million dollars. So eight million
9 dollars -- but again, there may be additional things that would
10 go out of unencumbered cash and come in as restricted cash. So
11 that number could be much bigger. Do you follow that point?

12 THE COURT: No.

13 MR. STAMER: So if you're utilizing -- if you're
14 utilizing unencumbered cash --

15 THE COURT: Yes.

16 MR. STAMER: -- to pay expenses --

17 THE COURT: Right.

18 MR. STAMER: -- that reduces the amounts that are
19 available to unsecured creditors. The cash collateral order
20 also says --

21 THE COURT: It depends.

22 MR. STAMER: Your Honor, it -- the cash collateral
23 order also says that the money that comes in --

24 THE COURT: Yes.

25 MR. STAMER: -- is not going to replace the money

1 that was spent out of the unsecured -- out of the unencumbered
2 cash. It will be in a segregated account for the benefit of --
3 of the secured lenders. So it's effectively, you get hurt
4 twice.

5 THE COURT: Well, but I'm not so sure about that
6 second part. I mean, the way I heard that second part being
7 described was -- and I think it -- the way it was -- the way I
8 heard it was that the debtor quite properly is going to be very
9 carefully mapping and tracking all cash that comes in and we're
10 going to know. But to the extent that it needs to be
11 allocated, reallocated, what have you, we're going to have the
12 ability to do that because we're going to be tracking it so
13 well. I love that.

14 MR. STAMER: Yes.

15 THE COURT: Right.

16 MR. STAMER: We love that, too.

17 THE COURT: I love that.

18 MR. STAMER: We love that, too.

19 THE COURT: So that's a good thing for you and it
20 seems to me that to the extent that you have harm that you've
21 suffered because later on at the end of the litigation as
22 opposed to a negotiated resolution it turns out that, in fact,
23 you were right that the cash was unencumbered, there is a way
24 of taking all of those nice piles of money and adjusting it so
25 that, in fact, you will not have been harmed.

1 So I'm getting nods behind me, which you can't see,
2 but it seems to me -- here comes Mr. Dublin to tell you why I'm
3 getting it wrong.

4 MR. STAMER: Actually, he was just saying hello. I
5 haven't seen --

6 (Laughter)

7 MR. STAMER: It -- Your Honor, there are two other
8 ways in which we're harmed. And if this is truly an interim
9 order meaning it -- meaning notwithstanding that money went
10 out, notwithstanding that X and Y. If it's truly interim so
11 that we say on the record anything is fair play, anything in
12 there is fair play at the final hearing when the committee is
13 appointed, with a couple of minor exceptions I don't think -- I
14 don't think I'm too troubled by that.

15 Here are the two exceptions. The one is what they're
16 doing with respect to the future litigation and the negotiating
17 posture and the leverage is what they're doing is they're
18 tilting the scale in favor of the secured lenders. Again --

19 THE COURT: That you have to explain to me because I
20 don't understand how a cash collateral order can -- can operate
21 to do that because I certainly don't want it to be operating to
22 do that.

23 MR. STAMER: Here's how. Again, out of unencumbered
24 cash -- and, again, we're going to -- unencumbered, not
25 unencumbered, we'll be able to put that pie back together at

1 the end, the cash collateral order says very clearly, you, the
2 unsecured creditors and actually the debtor, you can spend
3 \$50,000 of cash -- that includes unencumbered cash -- on
4 investigating these claims. \$50,000. You have -- you, only
5 you the debtor, and maybe they want to clarify this, but only
6 you the debtor -- you asked this question, Your Honor -- only
7 you can pursue these claims. I think they'll clarify that can
8 be anybody. And they utilize -- and there's a limit in the
9 amount of time during which you can pursue claims. I think
10 it's 75 days after the petition date or 60 days, which I know
11 we may revisit.

12 But if we come back in 30 days and for whatever
13 reason, Your Honor, you say, no, the time table is okay, we not
14 only have to finish our analysis --

15 THE COURT: But that -- but this is classic -- that
16 is interim. That is interim.

17 MR. STAMER: Your Honor, I get it. It's interim, but
18 that --

19 THE COURT: I don't even -- I don't have a committee
20 yet. I --

21 MR. STAMER: No. No.

22 THE COURT: -- mean, how could that not be truly
23 interim?

24 MR. STAMER: I completely agree. What we would ask
25 is you take it out. There's no reason for it to be there.

1 There's absolutely -- if it's interim, if it's not going to
2 last, otherwise there's a tremendous amount of pressure for the
3 committee when they start. They have to operate under the
4 assumption that for whatever reason they've got a deadline.
5 And if they don't actually do the work, then it's going to be
6 one of the biggest causes of action or the -- one of the big
7 claims in the case.

8 So again from --

9 THE COURT: So why don't you pause for a moment --

10 MR. STAMER: Sure.

11 THE COURT: -- and why don't I let Mr. Marcus --

12 MR. STAMER: Can I -- can I raise --

13 THE COURT: -- react to that one?

14 MR. STAMER: Your Honor, may I raise one -- one last
15 issue before --

16 THE COURT: Sure.

17 MR. STAMER: -- and then I'll stop.

18 There are things in the cash collateral order that
19 are not interim and that are actually very prejudicial. And
20 what I would refer you to is paragraph 12.

21 THE COURT: Okay.

22 MR. STAMER: And, again, Your Honor, it's I think the
23 last two sentences on page 33 of the order.

24 THE COURT: The avoidance of doubt?

25 MR. STAMER: No. The prepetition --

1 THE COURT: The prepetition secured parties.

2 MR. STAMER: -- secured parties.

3 So what -- and, again, we haven't had a ton of time
4 with these documents, but here's just one example.

5 THE COURT: Okay.

6 MR. STAMER: So the secured lenders may argue that
7 it's all ours. It's -- you know, the fact that the revolver
8 proceeds were unencumbered --

9 THE COURT: Right.

10 MR. STAMER: -- we can trace money that went into
11 that account. Therefore, you know, this is how much went in.
12 It's all ours. And we say, wait, no, we think you're wrong for
13 15 reasons, one of which is it's all been comingled. It's been
14 comingled prepetition, post-petition, and then we figure out
15 who's right and who's wrong.

16 But the company can't be waiving its arguments in an
17 interim cash collateral order to say that because something is
18 comingled you can't argue that there's not a -- that banks
19 don't have a lien.

20 So stuff like that.

21 THE COURT: Okay. So let's start there and then work
22 backwards.

23 On this one I need someone to tell me if the words
24 mean what they say they mean because that's not what I thought
25 we were doing.

1 MS. SCHONHOLTZ: Your Honor, if I may --

2 THE COURT: Ms. Schonholtz.

3 MS. SCHONHOLTZ: -- Margo Schonholtz. That is not
4 what they mean. The point of this is simply to say because
5 everything's coming into one operating account and our
6 segregated cash is not moving out for some period of time, so
7 that the accounting and tracing can be done and the netting of
8 expenses can be done, all this says is that while it's sitting
9 in there, we are not waiving our rights to say that it's --

10 THE COURT: Okay.

11 MS. SCHONHOLTZ: -- our --

12 THE COURT: But that's not what these words say.

13 MS. SCHONHOLTZ: No. No. It's while they're sit --
14 while it's post-petition, while the money --

15 THE COURT: Yes.

16 MS. SCHONHOLTZ: -- is coming in there, okay.

17 THE COURT: Right.

18 MS. SCHONHOLTZ: It's all coming into one account.
19 We could have said, and we did not, the money hits the
20 operating account. It goes into a segregated account for us
21 and we'll settle up later.

22 Instead, the construct, at the request of the debtor
23 because it works better for the debtor to account for what is
24 attributable to our undisputed collateral and what is not is it
25 sits in one account. This is all coming in after the petition

1 date.

2 THE COURT: Right.

3 MS. SCHONHOLTZ: It sits in one account. It gets
4 accounted for over essentially six weeks. The expenses
5 attributable to it get deducted from it and then the net moves
6 out

7 THE COURT: Okay. I hear you.

8 MS. SCHONHOLTZ: And it's just --

9 THE COURT: And I --

10 MS. SCHONHOLTZ: -- protecting us.

11 THE COURT: -- have no problem with that, but that's
12 not what these words say.

13 MR. STAMER: That's not what it says.

14 THE COURT: That's not what these words say. So if
15 what Ms. Schonholtz is saying is the deal, then we ought to
16 write those words down instead of these words.

17 MR. MARCUS: Okay. No problem, Your Honor. We will
18 fix that.

19 MS. SCHONHOLTZ: And the other thing it covers, and
20 we'll fix it. But the other thing it covers is the argument we
21 started with, although my colleague here keeps saying that it
22 is all unencumbered. This is also just to reserve our rights
23 where we have in other places that because of the comingling
24 prepetition we are not waiving our rights to say it's our
25 collateral.

1 THE COURT: Right. But, again, that's not what those
2 -- that's not what the words say.

3 MR. STAMER: Correct, Your Honor.

4 THE COURT: What -- Ms. Schonholtz, what you just
5 said, I'm fine with. I think they're fine with. So I think
6 the order -- if that seems to be the hottest of the hot buttons
7 that have been identified --

8 MR. STAMER: There's a few other if -- and I don't
9 mean to be --

10 THE COURT: Okay.

11 MR. STAMER: -- a podium hog, but I'll --

12 THE COURT: You're being a podium hog, but that's
13 okay.

14 MR. STAMER: I know. And I hate doing that.

15 THE COURT: Okay. But, wait, but this is progress
16 and this is progress and maybe -- I know everybody was up all
17 night. That's fine. But let's keep going because we can
18 narrow the issues --

19 MR. STAMER: Okay.

20 THE COURT: -- and maybe get through this.

21 MR. STAMER: I appreciate your indulgence, Your
22 Honor.

23 THE COURT: All right. So --

24 MR. STAMER: So --

25 THE COURT: So let's go back to the one before -- the

1 point before it, which was the litigation funding and the
2 period of time. Okay. It is certainly usual and customary to
3 start somewhere with the complete understanding that it's
4 absolutely interim and when the committee comes in, that's not
5 going to stand as a high water mark, a bar you have to get over
6 or a presumptive period or limitation.

7 To me, it's obvious in a case like this where this
8 could be the whole ball of wax that we're not going to cause
9 people to have to, you know, spend a dollar and a half over a
10 period of two weeks to figure the whole thing out.

11 But it's truly interim. You haven't had a chance --
12 I mean, the more you negotiate it now, the more it becomes
13 something that somebody could later argue ought to be
14 reflective of what the final ought to be. I would rather it be
15 this is what got put in now.

16 I'm saying it out loud six times that it's interim.
17 When a committee comes in there will be a negotiation. We will
18 have had an opportunity to have the conversation, you among
19 yourselves and then with me, about what this case is going to
20 look like because somebody already started talking about
21 motions to dismiss and I may have some different ideas. So --

22 MR. STAMER: Your Honor --

23 THE COURT: -- I think on that one --

24 MR. STAMER: -- we hear you. We would --

25 THE COURT: -- you've got to believe me that --

1 MR. STAMER: -- we would prefer it out and we --

2 THE COURT: -- it's interim.

3 MR. STAMER: -- believe you.

4 THE COURT: Okay.

5 MR. STAMER: We believe you. That's fine.

6 THE COURT: Ms. Schonholtz.

7 MS. SCHONHOLTZ: May I be heard briefly on that one?

8 THE COURT: Sure.

9 MS. SCHONHOLTZ: We started out with a shorter
10 challenge period for the committee. At the request of Mr.
11 Schwartzberg we changed it to 60 days from the entry of the
12 final order. And, obviously, the final order is way out there.

13 THE COURT: At least 20 days out from now.

14 MS. SCHONHOLTZ: At least 20 plus days out there. So
15 we went farther than we usually do.

16 THE COURT: But it -- it -- that's great, but, again,
17 it may not -- at the end of the day when we get to the final in
18 the absence of something that's wholly consensual, you might
19 take a position that it's not enough and we can just deal with
20 it then.

21 MR. STAMER: Your Honor, we're fine with that.

22 THE COURT: Okay.

23 MR. STAMER: We're fine with that.

24 THE COURT: All right. So I'm on a roll here.

25 MR. STAMER: Your Honor --

1 (Laughter)

2 MR. STAMER: You're on a roll. I think we've -- we
3 clarified my number 3, which is we all know the debtors have
4 the initial standing to pursue avoidance claims subject to you
5 letting somebody else do it. So the -- whether we change the
6 words or clarify on the record, it's not expecting or it's not
7 --

8 THE COURT: Right.

9 MR. STAMER: -- to be exclusive.

10 We talked about the funding of the litigation. If
11 that's completely open when we come back for the final, we'll
12 come back with a final. This is one that I find particularly
13 troubling.

14 This is a contested cash collateral. I'm sorry.
15 This is a consensual cash collateral order. Where I come from,
16 if you violate the consensual cash collateral order, people
17 retreat to their neutral corners and then you fight about the
18 use of cash collateral.

19 My reading of this order, and they can correct me if
20 I'm wrong, if there's a bust with respect to the use of cash
21 collateral, including when it terminates, I think in January,
22 the automatic stay is vacated and they can extend -- they can
23 pursue remedies. That can't be appropriate for any cash
24 collateral, but particularly an interim cash collateral order.

25 THE COURT: Ms. Schonholtz.

1 MS. SCHONHOLTZ: I'm certainly hopeful we'll have a
2 final cash collateral order before January.

3 THE COURT: So that's -- so -- but that -- see, that
4 cuts both ways, right. So you're absolutely correct in your
5 observation. So is Ms. Schonholtz. So that gets to this --
6 you know, to the then -- then why are we doing this because
7 obviously we'll have a final cash collateral order before
8 January. Maybe there will be a miracle and we'll even have a
9 confirmed case before January.

10 But --

11 MR. STAMER: Your Honor --

12 THE COURT: So given that, why do you care?

13 MR. STAMER: I -- I actually don't think that I
14 explained that.

15 So I'm not saying just the deadline by when you need
16 a final cash collateral entered. That's the only bust. If the
17 company -- again, and I haven't spent that much time with the
18 document. If the company violates, if there's a termination
19 event, whatever it is, the company violates the budget, it's
20 not about, okay, we're terminating and, therefore, let's go to
21 the judge and see if we can use your cash. It's we're going to
22 start sweeping your cash because the automatic stay has been
23 violated. That should be removed.

24 THE COURT: I want to hear from the debtor on this
25 one, actually. I mean, I could understand why Ms. Schonholtz

1 is in favor of that provision. But -- but I guess the question
2 is it would certainly seem somewhat more usual when there's a
3 trip that you have to come back instead of things beginning to
4 devolve automatically.

5 MR. MARCUS: Yes, Your Honor. And, quite frankly, we
6 would want the -- this was -- this was a negotiated paragraph.
7 We would want notice no matter what. But the automatic
8 termination that Mr. Stamer is referring to, I think there's a
9 -- kind of a whole list. So --

10 THE COURT: Can you show -- point me specifically,
11 Mr. Marcus.

12 MR. MARCUS: Of course.

13 So, Your -- the termination paragraph begins on page
14 28. It's paragraph 10, begins on page 28. And right at the
15 bottom of 28, Your Honor, it says, The occurrence of the events
16 set forth in A, B, C, D, I, J, K, L, M, N and O those are
17 immediate occurrences. And then with respect to the other
18 four, I think that's E, F, G and H there's a five-day notice
19 period.

20 THE COURT: So -- so A, B, C, D are immediates?

21 MR. MARCUS: A, B, C -- A, B, C, D are immediates.
22 E, F, G, H we get five days' notice, and then --

23 THE COURT: So let's look at A, B, C, D.

24 MR. MARCUS: Okay.

25 THE COURT: Okay.

1 MR. MARCUS: Uh-huh.

2 THE COURT: The dismissal or conversion. Right.

3 That's not going to happen without an order from me, right?

4 MR. MARCUS: That's correct.

5 THE COURT: So that's an easy one, right? I'm
6 looking at both of you at the same time. That's an easy one
7 because we're going to know because you're not going to dismiss
8 or convert without coming here.

9 MR. MARCUS: Correct.

10 THE COURT: Right?

11 MR. MARCUS: That's why --

12 THE COURT: Okay.

13 MR. MARCUS: That's why --

14 THE COURT: That's why --

15 MR. MARCUS: -- five days' notice --

16 THE COURT: -- that one doesn't bother me.

17 MR. MARCUS: -- is -- we're okay with that.

18 THE COURT: Okay.

19 MR. MARCUS: Correct. Okay.

20 THE COURT: The entry of an order by this Court
21 granting relief from the automatic stay, okay, again, that's
22 going to require an order from me. So we're going to know
23 about that. So that's not -- that's not a -- the way you
24 presented this one to me is something's going to happen in the
25 dark of night and --

1 MR. STAMER: Your Honor --

2 THE COURT: -- the cash is going to begun --

3 MR. STAMER: -- it's not --

4 THE COURT: -- begun to be swept and --

5 MR. STAMER: I'm sorry. That -- that's not how I
6 meant to portray it.

7 THE COURT: Okay.

8 MR. STAMER: The -- from the unsecured, from the
9 2017's perspective --

10 THE COURT: Sure.

11 MR. STAMER: -- if, in fact --

12 THE COURT: Stay.

13 MR. STAMER: -- if, in fact --

14 THE COURT: I didn't -- I didn't mean to --

15 (Laughter)

16 THE COURT: I did not mean it that way.

17 MR. MARCUS: It was funny, though. My wife says the
18 same thing to me.

19 (Laughter)

20 MR. STAMER: Your Honor, the reason we want the stay
21 vacation to be taken out is because we're -- we know that
22 things are going to go really badly and we're going to have to
23 come to the --

24 THE COURT: The Court.

25 MR. STAMER: -- to the Court, and we're going to --

1 and the company is going to say, Judge, let us use cash
2 collateral involuntarily. And if you say yes, then you don't
3 have to worry about, you know, the automatic stay and all that
4 stuff. If you say no, it's done. It's done.

5 So what we want to do is take out the automatic stay
6 stuff and that automatically, no matter which trigger it is, it
7 brings us back to you if there's actually hope where the
8 debtors can -- can utilize cash collateral. That's why it's
9 not --

10 THE COURT: Okay.

11 MR. STAMER: -- again, it's not a DIP order.

12 THE COURT: I understand. I -- what I'm struggling
13 with, though, is the scenario in which somebody makes a motion
14 for relief from the automatic stay and I don't have the ability
15 at that moment to figure out whether and on what circumstances
16 the debtor can use cash collateral.

17 So now I'm going to ask -- again, I'll look at Ms.
18 Schonholtz. Don't -- do you agree with that? I mean --

19 MS. SCHONHOLTZ: Your Honor, if I can just focus us
20 all for two seconds on the words. It actually says that on and
21 after the termination date the debtors shall immediately cease
22 using cash collateral and the first lien agent may, in
23 accordance with the terms of this interim order, absent further
24 order of the court, do all these things.

25 THE COURT: Right. So --

1 MS. SCHONHOLTZ: So the presumption is notice, not
2 notice. There's always an opportunity to come back --

3 THE COURT: To come in --

4 MS. SCHONHOLTZ: -- but what we are --

5 THE COURT: Right.

6 MS. SCHONHOLTZ: -- saying is until we're back and
7 that's resolved --

8 THE COURT: Right.

9 MS. SCHONHOLTZ: -- you can't force --

10 THE COURT: So what I care --

11 MS. SCHONHOLTZ: -- the use of cash collateral.

12 THE COURT: -- what I care about is the dark of night
13 scenario. As there is nothing --

14 MS. SCHONHOLTZ: There is no --

15 THE COURT: -- in here --

16 MS. SCHONHOLTZ: There's not one.

17 THE COURT: -- that allows you unilaterally and
18 without anybody in the case having recourse to -- the ability
19 to come to court and say, we need to fix this, then everybody's
20 rights are protected.

21 MS. SCHONHOLTZ: Your Honor --

22 THE COURT: And --

23 MS. SCHONHOLTZ: Your Honor --

24 MR. STAMER: Can I just -- when we --

25 MS. SCHONHOLTZ: The only thing we're saying which is

1 standard is if there's a termination event, if it's automatic
2 or if it requires notice and the notice is given, we can't be
3 forced to continue to provide cash collateral. But we're
4 always back here.

5 THE COURT: But then you -- so you can't be forced
6 to, but you can come back here and I can force you to.

7 MS. SCHONHOLTZ: Correct. I hope not, but, yes.

8 MR. STAMER: Your Honor, I think we're -- I'm not
9 sure the words say that, but we're okay with not forcing them
10 to have to let us use -- let the company use cash collateral if
11 there's a termination letter. That's not what I'm worried
12 about.

13 THE COURT: Okay.

14 MR. STAMER: What I'm worried about is them actually
15 pursuing remedies --

16 THE COURT: But, again, I'm going to -- something bad
17 happens. There's a termination event. But it's not in the
18 dark of night, so all of you know and someone has the ability
19 in the next moment to file an emergency motion for use of cash
20 collateral. Ms. Schonholtz has said, I don't agree to it, and
21 you all have said, we don't care. We're going to court. And
22 then you get to come in.

23 So it is -- it's -- if it's not a cure mechanism,
24 it's the opportunity to come in and get an order of court that
25 allows the company, that authorizes the company to use cash

1 collateral with or without their consent. And that's --

2 MR. STAMER: I think that's -- that would satisfy us.

3 But, again, -- it's --

4 MR. MARCUS: That's okay.

5 MR. STAMER: -- as long as there's an opportunity for
6 people to run into court.

7 MR. MARCUS: Your Honor, when I was kind of going
8 through these before, I -- maybe I didn't articulate it well.
9 That's exactly why I said we got comfortable with the automatic
10 terminations because we would know they were going to happen --

11 THE COURT: Right.

12 MR. MARCUS: -- before they happened. And the one --
13 so, for example, look at E, the failure by the debtors to make
14 a payment required pursuant to this interim order.

15 THE COURT: Right. I mean --

16 MR. MARCUS: If we just forget --

17 THE COURT: -- even in --

18 MR. MARCUS: -- I don't know --

19 THE COURT: -- even in a DIP --

20 MR. MARCUS: -- Ms. Schonholtz has to --

21 THE COURT: Right.

22 MR. MARCUS: -- give me five days' notice --

23 THE COURT: Even in a DIP --

24 MR. MARCUS: -- of that.

25 THE COURT: -- right, it's not usual, at least as far

1 as I'm concerned, for there to be a provision that let's you
2 pick up your toys and go home without coming back to court to
3 keep the company running.

4 So I --

5 MR. MARCUS: I actually think --

6 THE COURT: I feel like I'm three for three here.

7 MR. STAMER: I think we're on a roll.

8 MR. MARCUS: Yeah.

9 THE COURT: Okay.

10 MR. STAMER: Shall we -- shall we proceed?

11 THE COURT: If we can keep it up, then --

12 MR. STAMER: I've got --

13 THE COURT: -- then we don't have to have a witness
14 and I can let you folks, you know, try to write the words that
15 describe all this. But so far we have obviated the prejudice
16 that I -- we have explained away, I think, the prejudice that
17 you were concerned about.

18 MR. STAMER: With the modifications Your Honor has --
19 has discussed.

20 THE COURT: Well, I --

21 MR. STAMER: Yes.

22 THE COURT: Let's call them clarifications.

23 MR. STAMER: Even better. I've got a few more if I
24 may be so bold.

25 THE COURT: Okay.

1 MR. STAMER: Again, running the risk of being --

2 MR. MARCUS: Yeah. I like Mr. Stamer. I'm happy to
3 stand -- continue to stand right here, but if you --

4 THE COURT: You can have a seat.

5 MR. MARCUS: He really should have the podium.

6 THE COURT: You can have the seat, Mr. Marcus.

7 MR. MARCUS: Okay. Thank you.

8 THE COURT: Thank you.

9 All right. What else?

10 MR. STAMER: Okay. They're waiving marshalling in
11 the interim cash collateral. They are forcing the company and
12 all the parties to waive marshalling. It's not appropriate.
13 It's not appropriate here. It's not appropriate in the final.
14 It's not appropriate. That should come out. Whether --

15 THE COURT: Where -- show me. Show me the language.

16 MR. STAMER: Paragraph 30. Paragraph 30. It's very
17 simple. You waive marshalling.

18 (Pause)

19 THE COURT: Ms. Schonholtz, you want to explain why
20 you need this?

21 MS. SCHONHOLTZ: Yeah. It's one company. The cash
22 is all comingled in one collateral pool, and I don't know why
23 we would, given all the other reservations of rights, we would
24 be subject to the doctrine of marshalling.

25 MR. STAMER: Judge --

1 THE COURT: Go ahead.

2 MR. STAMER: Are you done? I'm sorry. I didn't mean
3 to interrupt.

4 MS. SCHONHOLTZ: Yes.

5 MR. STAMER: Okay.

6 We have no idea how this is going to play out, what
7 claims can or cannot be avoided in what buckets. So to
8 actually waive marshalling on the first day, you just -- you do
9 it in a vacuum. And, again, I'm sorry to beat the drum over
10 and over again. This is a cash collateral order. They're
11 entitled to be protected for the diminution of the value of
12 their collateral, which is all over this document. This is --
13 this is completely excessive and unnecessary. Why would they
14 take that away from the estate? It's because they can. They -
15 - the secured lenders put it in DIP loans all the time.

16 MS. SCHONHOLTZ: It's my understanding, Your Honor,
17 that unsecured creditors do not, by law, benefit from
18 marshalling. And so it is part of a negotiated, highly
19 negotiated cash collateral order and this is one of the
20 protections that we virtually always require even giving up
21 many in here that we usually require to get a deal done.

22 MR. STAMER: I don't -- I don't really understand
23 that last part or the first part, which is we don't --

24 THE COURT: I don't understand this --

25 MR. STAMER: -- we don't --

1 THE COURT: -- entire thing, frankly, in the sense of
2 that this is an interim order. The great purpose of it is to
3 maintain the status quo. I think it's meaningless in an
4 interim order. And to the extent that it's something that
5 folks wants to talk about on the final, Ms. Schonholtz, I would
6 suggest that that might be a way to go.

7 MS. SCHONHOLTZ: I understand, Your Honor.

8 THE COURT: All right. So we're going to take out
9 paragraph 30.

10 MR. STAMER: Okay.

11 MS. SCHONHOLTZ: Can I -- may I ask that it stay in,
12 but subject to the final order?

13 MR. STAMER: Your Honor, I'll -- I'm going to speak
14 to that in a second with respect to 552 and 506(c).

15 THE COURT: Okay. Hold on. I -- I just want to keep
16 things -- I don't see how it could come in effect -- come into
17 effect in the interim period. I'm just in -- in a real life
18 sense.

19 MS. SCHONHOLTZ: Well, there's a lot in here.
20 There's -- the attention of this is -- obviously, there's a
21 motion for approval of an interim and obviously a final.

22 THE COURT: Right.

23 MS. SCHONHOLTZ: I certainly would -- would be
24 agreeable to having, like many other provisions in here, the no
25 marshalling subject to the final order. I really do not want

1 to take it out because it is -- it is meant to --

2 THE COURT: So the --

3 MS. SCHONHOLTZ: -- be the subject for discussion --

4 THE COURT: Right.

5 MS. SCHONHOLTZ: -- between now and the final.

6 MR. STAMER: Your Honor --

7 THE COURT: So that --

8 MR. STAMER: -- I have a problem with it. Again, I'm
9 about simple. I'm about simple and clean. To the extent there
10 is a provision, you need an operative provision in an order.
11 You need it there. Okay. Let's fight about it. By its words
12 it's not subject to the final order. During the interim period
13 you're not marshalling. You -- we're not waiving marshalling.
14 We're not waiving 506(c) and 552. It should come out. We will
15 all agree we'll talk about it. They can put it in their
16 proposed final order and we can say take it out, take it out,
17 if that's what's bothering her. But it should not be in the
18 interim order.

19 THE COURT: I don't like to have something in an
20 order where I can't envision a circumstance in which it has any
21 relevance. So I -- and I don't mean to, you know, be
22 negotiating with the parties, but I guess I am.

23 Perhaps we could have an indication that everyone's
24 rights are reserved, including the rights to include this
25 provision in the final order. So you stake it out, but we've

1 acknowledge that it can't -- there's nothing that can happen in
2 the interim period one way or the other with respect to
3 marshalling.

4 MR. STAMER: We have no issue -- I'm sorry, Your
5 Honor.

6 MS. SCHONHOLTZ: Let me think about how we could
7 draft it to accommodate the -- Your Honor's request. There is
8 no intent to make this happen today, but just like many other
9 things in here that I -- I do want it to be --

10 THE COURT: Okay. To be redrafted --

11 MS. SCHONHOLTZ: -- there like a placeholder.

12 THE COURT: If it could be redrafted to reserve
13 rights instead of to appear to actually effect rights, I think
14 it would be a better fit.

15 MS. SCHONHOLTZ: Understood.

16 MR. STAMER: No issue with that, Your Honor.

17 THE COURT: Okay. All right.

18 MR. STAMER: Okay. I think I have one and a half
19 more. That's it. That's it. And then we can actually sit
20 down.

21 THE COURT: And then we could actually be done.

22 MR. STAMER: I think we're -- yeah.

23 THE COURT: Great.

24 MR. STAMER: Okay. The -- as I said before the
25 secured lenders, we believe, are going to be targets of

1 avoidance litigation, both with respect to the merger and what,
2 I don't think, what was apparent. Our understanding is there
3 was -- there were additional collateral grants within the 90
4 day of the bankruptcy case, of the filing of the case, in
5 connection with forbearance which we think are likely -- we can
6 claw back -- just filling out the picture. That's all.

7 THE COURT: Okay.

8 MR. STAMER: Filling out the picture.

9 What they've done here, Your Honor, is as Your Honor
10 knows when the estate avoids a lien or claim they avoid it for
11 the benefit of the estate.

12 THE COURT: Right.

13 MR. STAMER: Right. So I avoid a first lien claim.
14 The estate holds that first lien claim pari with other first
15 lien creditors.

16 What they've done is, and I think it's designed to
17 insulate them from an avoidance attack, is they are effectively
18 subordinating the 551 lien, the lien avoided for the benefit to
19 their adequate protection claims.

20 THE COURT: Okay. Show me.

21 MR. STAMER: Okay. Let's go to the videotape.

22 (Pause)

23 THE COURT: It's a good sign if you can't find it.

24 MR. STAMER: Yeah. I'm not making it up. Scout's
25 honor.

1 (Pause)

2 MR. STAMER: Paragraph 6.

3 UNIDENTIFIED SPEAKER: Is that right?

4 MR. STAMER: Yeah. I think so.

5 THE COURT: Okay. Let's look.

6 (Pause)

7 MR. STAMER: First sentence in paragraph 6.

8 THE COURT: So this is similar to the --

9 MR. STAMER: I'm sorry, Your Honor.

10 THE COURT: So I'll just make the first observation
11 that this is some -- similar to the point where we started when
12 we were talking about termination events because nothing's
13 going to be avoided between now and the final hearing.

14 So, once again, that cuts both ways, right? I can
15 say, why does this bother you because nothing's going to
16 avoided before then, and then I turn to Ms. Schonholtz and say,
17 nothing is going to be avoided before then, why do we have to
18 have this in here at all. You can have that fight/discussion,
19 hopefully agreement on the point at the final hearing. This is
20 -- described an event that is not going to occur between now
21 and the final.

22 So can we -- can we -- go ahead.

23 MS. SCHONHOLTZ: if the question is, can we take it
24 out, the answer is no because there will be use of cash
25 collateral and possible adequate protection claims between now

1 and the final.

2 THE COURT: Right.

3 MS. SCHONHOLTZ: And you are correct that nothing
4 will be avoided between now and then, but I don't see any --
5 this basically says we're senior to ourselves, too, if
6 anything's avoided. So I don't understand the premise that if
7 it's -- if it's a cash collateral order that's giving us
8 adequate protection for our cash, why we're not entitled to
9 this over everybody, frankly, including ourselves. This is
10 pretty standard.

11 I mean, I'm not going to subordinate adequate
12 protection, liens and claims. That kind of defeats the purpose
13 of this order.

14 MR. STAMER: The adequate protection liens and claims
15 are subordinated to their first lien to begin with.

16 Let's -- again, I'm -- we haven't had a lot of time
17 with the document so --

18 THE COURT: Right.

19 MR. STAMER: -- let's just make sure we're clear.

20 THE COURT: Right.

21 MR. STAMER: So I've got a first lien claim, right,
22 and I've got adequate protection --

23 THE COURT: Right.

24 MR. STAMER: -- adequate protection liens.

25 THE COURT: And part of it's avoided.

1 MR. STAMER: No. No. Before you even do, let's --

2 THE COURT: Right.

3 MR. STAMER: -- assume there's no avoidance. The
4 adequate protection liens --

5 THE COURT: Right.

6 MR. STAMER: -- that you give them are junior -- it's
7 -- they're not priming lien. They're junior to the first lien.

8 THE COURT: Let's --

9 MR. STAMER: They're senior to the second lien, but
10 they're junior to the first --

11 THE COURT: Let's make sure everyone's on the same
12 page.

13 Do you --

14 MS. SCHONHOLTZ: I don't understand it to work that
15 way. I understand it to be senior to everybody to the extent
16 that adequate protection --

17 THE COURT: Adequate protection liens are first.

18 MS. SCHONHOLTZ: Right.

19 THE COURT: First liens are second.

20 MS. SCHONHOLTZ: Correct.

21 MR. STAMER: Right.

22 THE COURT: Right?

23 MS. SCHONHOLTZ: Yeah.

24 THE COURT: Avoided liens are --

25 MS. SCHONHOLTZ: Avoided.

1 THE COURT: -- avoided.

2 MR. MARCUS: Avoided liens have whatever priority
3 they have --

4 MS. SCHONHOLTZ: Right.

5 THE COURT: Have whatever --

6 MR. MARCUS: -- before they were avoided.

7 MS. SCHONHOLTZ: Right.

8 THE COURT: -- priority they have.

9 MS. SCHONHOLTZ: Right.

10 MR. STAMER: Avoided liens have whatever priority
11 they have and those liens are entitled to the adequate
12 protection claims and liens that --

13 THE COURT: No. Adequate -- no. No. Adequate
14 protection is first --

15 MS. SCHONHOLTZ: Right.

16 THE COURT: -- no matter what.

17 MR. STAMER: So adequate protection --

18 THE COURT: Then --

19 MR. STAMER: I --

20 THE COURT: Okay. Ms. Schonholtz, do you want to put
21 it into your words?

22 MS. SCHONHOLTZ: Adequate protection is at the top of
23 the heap --

24 THE COURT: Right.

25 MS. SCHONHOLTZ: -- and that is, in part,

1 particularly in this case where the collateral is a depleting
2 asset. We're not -- the wells don't regenerate themselves.

3 THE COURT: Right.

4 MS. SCHONHOLTZ: And so we are entitled to adequate -
5 -

6 THE COURT: That's classic --

7 MS. SCHONHOLTZ: -- protection.

8 THE COURT: -- adequate protection.

9 MS. SCHONHOLTZ: It is classic adequate protection.
10 It is at the top of the heap. Second would be first liens that
11 are not avoided, which is what we expect here, second liens to
12 the extent they're still there, and then everything else.

13 MR. MARCUS: I agree with that, Your Honor, and
14 obviously the lien only exists with respect to the diminution
15 in the value and their interest in the --

16 THE COURT: Right.

17 MR. MARCUS: -- collateral.

18 THE COURT: So that one -- that sounds correct.

19 MR. STAMER: I -- Your Honor, I didn't appreciate
20 that's how it -- that's how it worked.

21 THE COURT: Okay.

22 MR. STAMER: I think the only clarification is -- and
23 maybe I'm missing this as well. But to the extent you avoid
24 \$100 million of a first lien claim, you -- I believe the estate
25 gets the benefit of not only that claim, but also the adequate

1 protection liens and claims that would be protecting that \$100
2 million claim.

3 THE COURT: I don't think that that's right.

4 MS. SCHONHOLTZ: That doesn't work that way.

5 THE COURT: I don't think that that's right.

6 MR. STAMER: Okay.

7 THE COURT: So -- and I think on this one that I
8 think the language actually comports with what has been further
9 described here today. So I think this one is going to stick.

10 MR. STAMER: That's fine. We'll take another look,
11 Your Honor, but --

12 THE COURT: You can take --

13 MR. STAMER: -- that's fine.

14 THE COURT: -- another look at it --

15 MR. STAMER: Yeah.

16 THE COURT: -- and re-raise it at the final if that's
17 something that you then believe needs fixing. But I think on
18 this one we're going to stick with it.

19 MR. STAMER: Okay.

20 THE COURT: All right.

21 MR. STAMER: My last one, Your Honor --

22 THE COURT: Yes.

23 MR. STAMER: -- is --

24 THE COURT: The half, we're down to the half?

25 MR. STAMER: We're down to the half.

1 THE COURT: Okay.

2 MR. STAMER: We're down to the half. And that is to
3 truly preserve the status quo we don't think any adequate
4 protection payments should go out to third parties until the
5 final hearing, until the committee has been formed and had the
6 ability to weigh in on this. And we wait until the entry of
7 the final order.

8 THE COURT: Ms. Schonholtz.

9 MS. SCHONHOLTZ: We --

10 THE COURT: You're talking to -- you're talking about
11 professional fees?

12 MR. STAMER: Correct, and -- and anything else.

13 THE COURT: And anything else.

14 MS. SCHONHOLTZ: And interest.

15 MR. STAMER: Prepetition professional fees --

16 THE COURT: And interest?

17 MS. SCHONHOLTZ: Yeah.

18 MR. STAMER: Yeah. And interest and professional
19 fees for undersecured -- one or more undersecured creditor
20 groups.

21 THE COURT: All right. Go ahead, Ms. Schonholtz.

22 MS. SCHONHOLTZ: As you will hear later, Your Honor,
23 the debtors' seeking authority to pay a lot of money to
24 prepetition creditors and I mean a lot of money in order to
25 keep this business stable and going.

1 My clients took a hard look, frankly, at the amounts
2 that were in those motions and they, as part of a consensual
3 agreement, took a deep breath and said, okay. we can let, you
4 know, 25 plus million dollars go out between the interim and
5 the final. Okay.

6 Part of the requirement -- part of the requirement
7 is, as has been the case since the first forbearance agreement
8 was entered, monthly interest, the equivalent of monthly
9 interest, which is a whopping \$3.7 or 8 million before assuming
10 the interim obviously happens within 20 plus days, and a little
11 sub-period. So that one would firm up.

12 MR. STAMER: My only question is where --

13 MS. SCHONHOLTZ: Was that a half one by the way?

14 MR. STAMER: That was a half. That was a half.

15 THE COURT: That was a half.

16 MR. STAMER: The only question is where's that money
17 coming from.

18 THE COURT: Right.

19 MR. STAMER: So the money that she's saying is going
20 out the door, I assume that it's being pushed out from -- well,
21 the adequate protection is clearly coming out of --

22 THE COURT: Disputed --

23 MR. STAMER: -- disputed cash. How about the \$25
24 million that she -- that was referenced with respect to going
25 to prepetition creditors?

1 MS. SCHONHOLTZ: It depends.

2 THE COURT: It depends, right, Mr. Marcus?

3 MR. MARCUS: Yeah. The --

4 THE COURT: I think it depends.

5 MS. SCHONHOLTZ: Yes.

6 MR. MARCUS: It depends. There's going to be this
7 reconciliation and there's a --

8 THE COURT: And there's --

9 MR. MARCUS: -- full reservation of rights with
10 respect --

11 THE COURT: That's the point.

12 MR. MARCUS: -- to the G&S.

13 THE COURT: There's going to be -- we've identified
14 monies that need to be paid in order to get us off the group.
15 Every dollar that goes out we're going to know from whence it
16 came. Every dollar that comes in we're going to know from
17 whence it came. And at the end of the day in the absence of a
18 consensual resolution, everybody's going to know and everybody
19 can make arguments about how things should be reallocated.

20 MR. STAMER: And if our rights are truly reserved,
21 then, Your Honor, we're fine.

22 MS. SCHONHOLTZ: Your Honor, this order also contains
23 a provision, which I hate, but the debtors convinced me I had
24 to put it in that says, to the extent that any of this is
25 recharacterized, interest or fees, it gets applied to reduce

1 principal. So I'm not seeing the --

2 MR. STAMER: We'll --

3 MS. SCHONHOLTZ: -- harm here.

4 MR. STAMER: We'll ask for the further clarification
5 that it's reduced principal or disgorged to the extent --

6 MS. SCHONHOLTZ: It -- we are not willing to say it's
7 disgorged. We have a lot -- we have 900 plus million dollars
8 in loans. So applying things to the principal to reduce it
9 should satisfy all constituencies.

10 MR. STAMER: Well, again, so we're clear -- and maybe
11 we'll revisit --

12 THE COURT: This is --

13 MR. STAMER: -- that at the final --

14 THE COURT: This is an interim hearing.

15 MR. STAMER: I get it. When they say principal
16 they're talking about principal of the secured claim, to the
17 extent people are undersecured. I'm not sure that's clear on
18 the order.

19 So the fact that they have \$900 million of loans or
20 whoever has loans, to the -- it's not to reduce the unsecured
21 portion of their --

22 THE COURT: Right.

23 MR. STAMER: -- of the --

24 THE COURT: Correct. Correct.

25 MR. STAMER: Your Honor, thank you for the

1 indulgence.

2 THE COURT: All right. So I think we've now resolved
3 the objections with those clarifications, without the need for
4 the witness to testify.

5 I'm going to so order the record with respect to
6 everything that we just put on the record relating to the
7 objections that have been raised. You're going to have to
8 reduce it to an order, though. But I want to so -- I'm going
9 to so order the record so it's clear that on the basis of what
10 we've talked about here and the resolutions and clarifications
11 that we've put on the record, the company has authority to use
12 cash collateral --

13 MR. STAMER: Thank you, Your Honor.

14 THE COURT: -- subject to the record. Not that I
15 don't have confidence in your ability, but you now have more
16 folks who are going to have to look at this and I'm just not
17 sure how quickly that's going to be accomplished and I want it
18 to be clear that authority has been granted.

19 Are you okay with that, Ms. Schonholtz?

20 MS. SCHONHOLTZ: I am, Your Honor. As I -- as I
21 listened very carefully I only hear one revision that needed
22 redrafting, and that was, I believe, the first one.

23 Of court -- coming back to court is already in
24 there.

25 THE COURT: The coming back to court was clarified on

1 the record. It was the --

2 MS. SCHONHOLTZ: And the marshalling we need to
3 basically say everybody reserves their rights.

4 MR. MARCUS: Right.

5 THE COURT: Right. And then it was paragraph 12 was
6 the major one.

7 MS. SCHONHOLTZ: Right.

8 MR. STAMER: It's marshalling and 552 and -- 506(c)
9 and 552.

10 THE COURT: We didn't do a 506(c).

11 MS. SCHONHOLTZ: No. No. We --

12 MR. STAMER: I'm sorry, Your Honor. I --

13 MR. MARCUS: Is this the other half?

14 (Laughter)

15 THE COURT: We did it --

16 MR. STAMER: Your Honor, the revision -- the lender's
17 counsel requested that we have the marshalling mirror the
18 provision relating to 552 and 506(c). And if I wasn't clear, I
19 apologize. It says, subject to the final order the debtors
20 waive 506(c) and --

21 THE COURT: On paragraph --

22 MR. STAMER: -- 552.

23 THE COURT: -- 30, Ms. Schonholtz, you were going to
24 take that back and figure out what language it is that you
25 could --

1 MS. SCHONHOLTZ: Correct.

2 THE COURT: -- work with.

3 MS. SCHONHOLTZ: Correct.

4 THE COURT: There was the end of paragraph 12, the
5 two sentences that begin with prepositioned secured parties and
6 for the avoidance of doubt. That --

7 MS. SCHONHOLTZ: Correct.

8 THE COURT: -- was the language that needed to be
9 changed.

10 MS. SCHONHOLTZ: Correct. For those two --

11 THE COURT: And --

12 MS. SCHONHOLTZ: -- my understanding is those two
13 require a little bit of drafting --

14 THE COURT: Right.

15 MS. SCHONHOLTZ: -- but the rest does not.

16 THE COURT: And that was it, right?

17 MR. STAMER: Again, I -- I didn't follow the order.
18 My impression was we were going to keep the order in a way that
19 if it wasn't an operative provision we would reserve the
20 rights, whether it's marshalling, 552 or 506(c). Your Honor,
21 it's the same concept.

22 THE COURT: There's -- I'm sorry.

23 MR. STAMER: We think it --

24 THE COURT: I just -- we went through a series of
25 paragraphs. I -- we came to either clarifications because

1 people hadn't really understood how they worked --

2 MR. MARCUS: So --

3 THE COURT: -- and then we come out with these two
4 drafting exercises.

5 MS. SCHONHOLTZ: That --

6 THE COURT: Those are the only two.

7 MR. MARCUS: I think the --

8 MS. SCHONHOLTZ: That is my understanding, Your
9 Honor.

10 MR. MARCUS: Yeah. I think Mr. Stamer, when he was
11 talking about the marshalling paragraph, he did, I think, I
12 heard him say at the beginning, also, paragraph 15 which
13 relates to 506(c) and paragraph 29 --

14 THE COURT: I missed that.

15 MR. MARCUS: -- which relates to 552. Both of those
16 are drafted differently than the marshalling paragraph. They
17 both say, subject to entry of the final order, and so they're
18 not operative in the interim period. But I think what Mr.
19 Stamer was asking was can we redraft those the way we're
20 redrafting the marshalling paragraph.

21 THE COURT: Hold on. I -- now you're -- now you're --
22 - now we're getting a little bit out of control. That -- I
23 didn't hear that. I missed that entirely.

24 MS. SCHONHOLTZ: So did I, Your Honor.

25 THE COURT: Okay. I thought that those were --

1 paragraphs were shown as an example of something, but that we
2 weren't revisiting them.

3 MR. STAMER: Your Honor, I sincerely apologize. If
4 it wasn't -- it's on my issues list. It's -- I referenced it
5 for that reason.

6 THE COURT: What -- you want paragraph 15 changed?

7 MR. STAMER: I want the paragraph that talks in terms
8 of -- yes. I want paragraph -- I would request that paragraph
9 15 be changed. Again, this is a provision that says, subject
10 to the entry of the final order --

11 THE COURT: Right.

12 MR. STAMER: -- which means there -- which means
13 there's no reason for this to be -- for this to be in the
14 order. It's not operative during the period. And much like
15 the request counsel for the secured lenders' made before, it --

16 THE COURT: Well, this is one in which the U.S.
17 Trustee is traditionally all over it. This language works for
18 me. We're done on this one. We're not changing this
19 paragraph.

20 MR. STAMER: Okay. Thank you, Your Honor.

21 THE COURT: All right.

22 So once again the homework is the end of paragraph 12
23 and paragraph 13. That's the only drafting. Everything else
24 has been clarified to the extent it needed to be clarified on
25 the record.

1 MS. SCHONHOLTZ: Thank you, Your Honor.

2 THE COURT: All right.

3 MR. MARCUS: Thank you, Your Honor. That's very
4 helpful, actually.

5 THE COURT: Okay.

6 MR. MARCUS: The only other thing is a final hearing
7 date, but we don't have to do that now. We have a whole host
8 of other motions. Maybe it's better to do it at the end,
9 but --

10 THE COURT: I'll --

11 MR. MARCUS: -- there is another blank --

12 THE COURT: -- do whichever one you want. We can --

13 MR. MARCUS: -- that needs to be filled.

14 THE COURT: We can keep going and then we can pick
15 dates in a little bit.

16 MR. MARCUS: Thank you very much, Your Honor.

17 THE COURT: All right. Thank you.

18 Thank you. That was very -- that was very
19 productive.

20 MR. STAMER: Thank you, Your Honor.

21 THE COURT: I appreciate your willingness to work
22 through it. You, too, Ms. Schonholtz.

23 MS. SCHONHOLTZ: Thank you, Your Honor.

24 THE COURT: All right. What can we turn to next?

25 MR. BENNETT: Good afternoon, Your Honor. Ryan

1 Bennett again on behalf of the debtors. I'll try to move
2 through the rest of the agenda and -- so we can just focus on
3 any questions that you may have.

4 THE COURT: Okay.

5 MR. BENNETT: The first item up is the debtors'
6 motion to maintain its cash management system. It's a
7 relatively simple cash management system as far as big Chapter
8 11 cases go. There's one operating account that holds a lot --
9 holds the cash that everybody's been talking about this
10 morning. And then that cash is split out to the various
11 payable type of account -- disbursement accounts that are
12 mostly zero balance --

13 THE COURT: But no money is moving out of the system,
14 correct?

15 MR. BENNETT: We have some non-debtor subsidiaries,
16 but none of them are operating. Okay. So it's --

17 THE COURT: Right. So --

18 MR. BENNETT: -- not like NII where they sent it to
19 Mexico or something like that. Right. It's -- you know, it's
20 a scenario here where everything stays within the debtors'
21 system except for maybe a couple -- like very de minimis
22 corporate like filing costs and stuff just to maintain those
23 entities in good standing.

24 THE COURT: Okay. All right. Does anyone wish to be
25 heard or have any questions or commentary with respect to the

1 debtors' request to maintain this existing cash management
2 system?

3 All right. Very good. That will be approved on --

4 MR. BENNETT: Thank you, Judge. And I should have
5 noted out the outset that with respect to all of these motions
6 that we're going to talk about, they were all vetted with the
7 United States Trustee's Office with each of the represented
8 creditor or bondholder groups, with the RBL counsel, and second
9 lien counsel, and the orders that were filed incorporate all
10 the comments received from those folks.

11 THE COURT: Okay. Very good.

12 MR. BENNETT: So the next one is the motion for the
13 debtors' wage and benefit programs. This is an interim order.
14 It includes -- it picks up unpaid wages, the traditional
15 expense reimbursements, et cetera. Per an agreement with the
16 United States Trustee, two key points:

17 Payments made to any single employee will be subject
18 to the priority cap during the interim period;

19 Second point, there were not any 503 -- 503(c) type
20 payments to insiders.

21 THE COURT: And with respect to the cap, it's a
22 combination of wages and expenses?

23 MR. BENNETT: Yes, ma'am.

24 THE COURT: It's a --

25 MR. BENNETT: That's correct. It's not --

1 THE COURT: -- cap. It's just a cap.

2 MR. BENNETT: one and one. It's the whole thing.

3 THE COURT: Okay.

4 MR. BENNETT: Yes.

5 THE COURT: All right. That's the way I read it. I
6 thought that it was a very well prepared motion. It had
7 significant detail with respect to each of the categories.

8 Does anyone wish to be heard with respect to the
9 debtors' motion for entry of an interim order to pay wages and
10 related relief?

11 Mr. Schwartzberg.

12 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg for
13 the U.S. Trustee --

14 THE COURT: Come up, so -- come up to a microphone so
15 we can get you recorded.

16 MR. SCHWARTZBERG: Paul Schwartzberg for the U.S.
17 Trustee's Office.

18 Your Honor, I have not standing to object. I'm
19 standing to clarify something that I just think is -- because
20 of what's gone on Mr. Bennett probably just forgot to indicate.

21 There is a host of programs in the motion --

22 THE COURT: Yes.

23 MR. SCHWARTZBERG: -- that are not on for today and
24 they're all being kicked to the final.

25 THE COURT: Okay.

1 MR. SCHWARTZBERG: In discussions with debtors'
2 counsel, and they include severance motion, something called
3 combination motion, which if I recall there's so many of them
4 it may have been a sort of a bonus or retention motion. Those
5 are not going to actually go forward in this motion, and
6 between now and the second day hearing the debtor is going to
7 file a separate motion and to break those out from our typical
8 wage motion and do it on separate notice --

9 THE COURT: Okay.

10 MR. SCHWARTZBERG: -- just most -- one reason is so
11 that creditors -- it doesn't get buried in a wage motion
12 because these things are other than typical wages and we --

13 THE COURT: Okay.

14 MR. SCHWARTZBERG: -- wanted that out.

15 THE COURT: All right. Very good. Does that -- does
16 that effect the interim order?

17 MR. SCHWARTZBERG: It does not, Your Honor. And I
18 hesitated to speak. I just --

19 THE COURT: No. That's fine.

20 MR. SCHWARTZBERG: -- think --

21 THE COURT: That's fine. Okay.

22 MR. SCHWARTZBERG: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 MR. BENNETT: Thank you.

25 THE COURT: All right.

1 MR. BENNETT: All right. So --

2 THE COURT: So --

3 MR. BENNETT: Okay. Go ahead, Your Honor. I'm
4 sorry.

5 THE COURT: So now we've done cash collateral, cash
6 management, wages. That brings us to the royalty and working
7 interest motion. Is that --

8 MR. BENNETT: That's correct. That's correct, Judge.

9 THE COURT: -- correct?

10 MR. BENNETT: All right. So this motion, it's
11 particular to this industry in the sense that the debtors own
12 or own lease-hold interest in approximately 1,800 wells, oil
13 and gas wells. And as part of how it works in the industry,
14 these leases are, most of them at least are jointly held. So
15 the debtors have an interest in the lease, but there are other
16 folks that have interest: The original landowner, you know,
17 Mr. and Mrs. Smith who have the ranch and allow the debtors to
18 exploit the mineral assets of that ranch, other investors,
19 other companies who have interests in there.

20 And so they -- they're held and the value extracted
21 from the land is shared in a joint -- under a joint operating
22 agreement and that value is distributed by the operator. In
23 many cases, almost 90 percent of our cases we are the operator
24 so we're responsible for taking in the revenue, for paying out
25 the expenses. And so -- and then distributing the profits

1 essentially to the various interest holders.

2 So this motion is really to focus on the cash that
3 comes in on account of production and that we hold for these --
4 for other folks who have an ownership interest in the well. So
5 we'll take the money in and then we'll hold it and then we'll
6 blow it out, you know, on a regular schedule --

7 THE COURT: Distribute it.

8 MR. BENNETT: -- to folks. Distribute it. Exactly.
9 Exactly. Yes.

10 (Laughter)

11 MR. BENNETT: And we -- and to that point this is a
12 well-accounted for process which the creditor groups have
13 access to our book entries and can opine on how we're handling
14 it.

15 So the point being here is it's not property of the
16 estate. Under applicable state law it says that working
17 interests, payments, you know, payments that we receive that we
18 hold for working interest parties as well as royalty payments
19 which are the parties for the original landowner, those are not
20 property of the estate.

21 THE COURT: Or it's not property of the estate under
22 the Bankruptcy Code.

23 MR. BENNETT: And that's correct. So it's both,
24 state law and 541 --

25 THE COURT: 541(b)(4) --

1 MR. BENNETT: That's correct.

2 THE COURT: --(b)(i).

3 MR. BENNETT: That's right. There we go. And so to
4 that end we're asking permission to or the Court's blessing in
5 our ability just to continue to make those payments and --

6 THE COURT: All right.

7 MR. BENNETT: -- avoid disruption of the business.

8 THE COURT: And not to turn this into a quiz, but do
9 you know that -- roughly the amount of money that will be paid
10 pursuant to this order on an interim basis?

11 MR. BENNETT: Yes, Judge. So what we're going to
12 seek on the interim basis is -- on working interest there will
13 be 10.5 million on the interim.

14 THE COURT: And on the --

15 MR. BENNETT: And --

16 THE COURT: -- royalties?

17 MR. BENNETT: -- 18.5 million on the royalty.

18 THE COURT: All right. Does anyone wish to be heard
19 with respect to the debtors' request for authority on the
20 interim basis to make payments on account of the working
21 interest disbursements on the royalty payments?

22 MR. MELKO: Your Honor --

23 THE COURT: Yes, sir.

24 MR. MELKO: -- hi. Thank you. This is John Melko in
25 Houston. I -- actually, debtors' counsel can handle this.

1 There was a second agreement in addition to cash collateral for
2 clarification on this point, I believe.

3 THE COURT: I'm sorry, sir. I'm having a difficult
4 time understanding you.

5 MR. MELKO: I'm sorry, Your Honor. There -- we had
6 an agreement with counsel for the debtor on behalf of Hartz
7 (ph) Capital --

8 THE COURT: Yes.

9 MR. MELKO: -- to make a clarification with respect
10 to cash collateral. The Court's already heard that
11 clarification.

12 THE COURT: Yes.

13 MR. MELKO: There was -- there was a counterpart
14 agreement with respect to this motion and it's probably easier
15 if debtors' counsel does it if you're having trouble hearing
16 me.

17 THE COURT: Yes. He's about to do so.

18 MR. BENNETT: Right.

19 MR. MELKO: Thank you.

20 THE COURT: All right.

21 MR. BENNETT: I've got it right here --

22 THE COURT: All right. Thank you.

23 MR. BENNETT: -- Your Honor.

24 All right. The agreement was to read the following
25 into the record on behalf of the debtors.

1 "For the avoidance of doubt it's the debtors'
2 position that working interest owned by third parties
3 similar to royalty interests are separate, real property
4 interests, and neither of those property interests nor the
5 proceeds of the minerals as they are produced are property
6 of the estate."

7 THE COURT: All right.

8 MR. HERMAN: Thank you, Your Honor.

9 THE COURT: Yes.

10 MR. HERMAN: Brian Herman from --

11 THE COURT: Yes.

12 MR. HERMAN: -- Paul Weiss again --

13 THE COURT: Yes, Mr. Herman.

14 MR. HERMAN: -- on behalf of Wilmington Trust.

15 We don't have an objection on an interim basis. I
16 only rise to make the point that at least in my experience with
17 these kinds of motions, companies take a very sweeping view as
18 to what is lienable, what is not -- is or is not property of
19 the estate. And we've been working with the debtors to try to
20 understand exactly who is being paid, not just for odd
21 categories, but actual creditors, who is being paid, do they
22 have lien rights, would it be property of the estate.

23 We're going to continue to do that analysis. The
24 debtors have been very cooperative in giving us that
25 information, but I would like to reserve rights as we continue

1 to get the information and look at it at a final hearing to
2 take issue if we have any.

3 THE COURT: Understood.

4 MR. HERMAN: And that's also, Your Honor, with
5 respect to the next motion as well.

6 THE COURT: Okay.

7 MR. HERMAN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 All right. So that brings us to the

10 MR. BENNETT: Operating --

11 THE COURT: -- operating expenses and other
12 categories of relief.

13 MR. BENNETT: That's right, Your Honor.

14 So this motion also is tied to the nature of how
15 these oil and gas leases are managed and revenues are shared.
16 The -- and it goes to Mr. Herman's point in the sense that what
17 we've been help -- you know, the debtors performed a pretty
18 diligent -- very diligent process in analyzing the landscape of
19 vendors who have claims as of the filing and who have rights
20 under various state laws to assert liens, and identified the
21 group of claims and claimants that the debtors do believe have
22 the -- have viable lien claims and could be and likely would be
23 secured and earmark those for special treatment to be requested
24 today.

25 This is not traditional critical vendor type relief,

1 right, and these are -- these are parties with special property
2 rights, elevated property rights. Yes, just like in a
3 traditional critical vendor motion these people are very
4 important to our production, our supply chain. If they did
5 walk off it would cause significant damage. But in addition
6 they also have these elevated rights that bring them, you know,
7 to Your Honor today.

8 THE COURT: All right.

9 MR. BENNETT: So --

10 THE COURT: So why don't we walk through each of the
11 categories and make sure we have a clear understanding of what
12 the expected payment is in the interim period.

13 So first with respect to the operating expenses.

14 MR. BENNETT: Right. So on the operating expenses we
15 are anticipating during the interim period a --

16 THE COURT: \$20 million --

17 MR. BENNETT: -- \$20.5.

18 THE COURT: Right. That's --

19 MR. BENNETT: That's correct.

20 THE COURT: -- on page 7 of the motion.

21 All right. And on the joint interest billings?

22 MR. BENNETT: All right. Joint interest billings
23 appear to be 800,000, Your Honor.

24 THE COURT: Right. So in the motion those are
25 referred to as the non-operating working interest obligations.

1 Same thing? If you look at page 7 of the motion?

2 MR. BENNETT: Yeah. Sure. Let me look here. Okay.

3 So I'm sorry. That amount during the interim period, Your
4 Honor, is 485,000 for the joint interest billings.

5 THE COURT: Right.

6 MR. BENNETT: And so this -- these would be
7 situations where we are not an operator of the well.

8 THE COURT: Right.

9 MR. BENNETT: It's the unusual situation, the ten
10 percent outsider. And so, yeah, where we would be -- we would
11 owe on account of whatever the costs are that --

12 THE COURT: Someone else operates --

13 MR. BENNETT: Exactly. They send us the bill. We
14 pay it.

15 THE COURT: That 485 on that.

16 MR. BENNETT: During the interim period. That's
17 correct, Your Honor.

18 THE COURT: Okay. And with respect to the shipper
19 and warehouseman --

20 MR. BENNETT: Right. We believe that --

21 THE COURT: -- claims?

22 MR. BENNETT: -- we believe that to be 2.3 million.

23 THE COURT: Okay.

24 MR. BENNETT: And these are -- I think we will adhere
25 to these as caps for purposes of the order.

1 THE COURT: Right.

2 MR. BENNETT: And then 503(b)(9) there's 1.1 million.

3 THE COURT: Okay. All right. I think that's all the
4 categories. Does anyone wish to be heard with respect to what
5 I'll call by way of shorthand the lienholder motion?

6 All right. So those amounts will be authorized and
7 the motion approved on its submission.

8 MR. BENNETT: Thank you, Your Honor.

9 All right. Next on the list is the --

10 THE COURT: The taxes.

11 MR. BENNETT: We'll call it the taxes motion. Right.

12 It's a pretty traditional tax motion. It seeks treatment --
13 seeks the authority to pay certain prepetition taxes that come
14 due during the interim period. We've got sales and use tax of
15 about 930,000 that come due during the interim period;
16 franchise tax of 10,000; and then severance tax of 1.79
17 million. Severance tax is particular to the industry. It's
18 where you cease or sever the extraction process --

19 THE COURT: Okay.

20 MR. BENNETT: -- and it's a tax that's often placed
21 on --

22 THE COURT: You skipped over the big one, the
23 property taxes.

24 MR. BENNETT: Oh, that -- because none of it's due
25 during the interim period.

1 THE COURT: Okay. All right. Does anyone wish to be
2 heard with respect to the debtors' motion for an interim order
3 authorizing the payment of certain prepetition taxes and fees?

4 All right. That will be approved as well.

5 MR. BENNETT: Thank you, Your Honor.

6 Next we've got the -- what we'll call the equity
7 trading motion. Again, it's just a -- just equity. We're not
8 looking to inhibit debt trading. So this is just intended to
9 preserve the debtors' tax attributes. They've got about a
10 billion dollars worth of NOLs that could be utilized to realize
11 about \$360 million of cash savings or of tax savings. And so
12 we want to make sure that if there's movement in the equity for
13 some reason that we're able to get notice of that and try to
14 protect -- preserve estate assets.

15 THE COURT: All right. Does anyone wish to be heard
16 with respect to the debtors' motion regarding preservation of
17 NOLs and active trading?

18 All right. That will be approved.

19 MR. BENNETT: Thank you, Your Honor.

20 Next up is your traditional creditor matrix --

21 THE COURT: Creditor matrix.

22 MR. BENNETT: -- motion. No objections. We're
23 seeking to just file a consolidated list of 50 largest and then
24 keep a list on with the tax agent.

25 THE COURT: Same goes with respect to the schedules'

1 extension I take it? No objections to that?

2 MR. BENNETT: No objection. Looking for a 30 day
3 extension to the statutory 14 day period.

4 THE COURT: All right. Anyone wish to be heard
5 either with respect to the creditor matrix motion or the
6 schedules extension motion?

7 All right. Those will be approved as well.

8 MR. BENNETT: Thank you, Your Honor.

9 Next up is the notice of claims agent retention
10 motion. We're seeking to retain Prime Clerk for purposes of
11 the notice and claims duties. We've shared a copy of the
12 motion with the clerk's office. The clerk has approved it.
13 And we did go through the protocol where we took and solicited
14 bids from three separate outfits and they -- the debtors
15 selected based on pricing.

16 THE COURT: All right. You've articulated all the
17 important elements. Does anyone wish to be heard with respect
18 to the debtors' application to retain Prime Clerk as noticing
19 agent?

20 All right. Very well. That will be approved.

21 MR. BENNETT: Thank you, Your Honor.

22 THE COURT: And I think that leaves us with case
23 management.

24 MR. BENNETT: Just case management, right.

25 THE COURT: Okay.

1 MR. BENNETT: And so with respect to hearing dates if
2 Your Honor will --

3 THE COURT: Sure.

4 MR. BENNETT: So we have the utility deadline, right,
5 the 30 days --

6 THE COURT: Right.

7 MR. BENNETT: -- for 366. So we've got to -- we've
8 got to get something on the calendar hopefully around I guess
9 the week of August 12th I think we were thinking. Does that
10 work for you?

11 MR. HENES: Sure.

12 MR. BENNETT: Was it --

13 THE COURT: All right. I would like to give you
14 August 10th. Does that work?

15 MR. BENNETT: Yeah. That works.

16 THE COURT: Does August 10th work for a final hearing
17 as well on the other motions?

18 MR. HENES: Yes.

19 THE COURT: Today is the 16th, so 14 plus 10. Does
20 Monday, the 10th work for folks?

21 MR. HENES: Yes, Your Honor.

22 MS. SCHONHOLTZ: Yes, Your Honor.

23 THE COURT: All right. And I understand that it is
24 the summertime and people have plans. I'm willing to relax the
25 rules with respect to telephonic appearances, you know, to the

1 extent that that facilitates everyone's ability to live their
2 lives.

3 MR. HENES: Thank you.

4 MS. SCHONHOLTZ: Thank you, Your Honor.

5 MR. BENNETT: Thank you, Your Honor.

6 THE COURT: All right. So August 10th. Let's do
7 10:00. I would -- I'll be hopeful that everything will be
8 consensual. To the extent that it's not, it would be nice to
9 know in advance so that we can plan and we can do -- go from
10 there. But for the moment I'll be hopeful.

11 MR. BENNETT: We'll definitely work toward --

12 THE COURT: Mr. --

13 MR. BENNETT: -- that end, Your Honor.

14 THE COURT: Mr. Schwartzberg, do you have -- are you
15 going to immediately begin solicitation for a committee?

16 MR. SCHWARTZBERG: I thought of making one, Your
17 Honor, yes. Yes.

18 (Laughter)

19 MR. SCHWARTZBERG: Your Honor, we set July 28th,
20 that's Tuesday, at 10 a.m. I understand the debtors have
21 reserved a room at the Waldorf and I believe it's on the fourth
22 floor.

23 THE COURT: Okay. So that's excellent because that
24 will give, I won't say ample, but a good amount of time for the
25 organization --

1 MR. SCHWARTZBERG: And -- oh, and my understanding is
2 Prime Clerk will today, at the latest tomorrow, send out the
3 notice to the top 50 creditors.

4 THE COURT: All right. Excellent. Thank you very
5 much.

6 MR. SCHWARTZBERG: Thank you.

7 THE COURT: Okay.

8 MR. BENNETT: Your Honor, do you have any -- should
9 we -- do you want to schedule any future omnibus hearings now
10 or is that something we --

11 THE COURT: Well --

12 MR. BENNETT: -- coordinate with chambers or --

13 THE COURT: -- I think that --

14 MR. BENNETT: We don't need to.

15 THE COURT: We -- I think it would be best to talk to
16 chambers because my calendar has a remarkable way of filling
17 up, but we will give you omnibus dates. September gets you
18 into Jewish holidays, NCBJ and other good things. But we'll
19 get you --

20 MR. BENNETT: Okay. Great.

21 THE COURT: -- some dates. We'll get you some dates.

22 MR. BENNETT: All right. Thank you.

23 THE COURT: All right. Is there anything else that
24 we need to accomplish today?

25 I think -- before I let you go I would like to spend

1 a few minutes talking about kind of the overall game plan
2 because there was a suggestion that immediately we were going
3 to have litigation schedules, and I just wanted to hear the
4 debtors' --

5 MR. HENES: Sure.

6 THE COURT: -- perspective on all of that.

7 MR. HENES: Yes. Our perspective on that, Your
8 Honor, is as we filed our complaint and we will work with Paul
9 Weiss and the other parties in terms of trying to set a
10 schedule.

11 THE COURT: I'm sorry. I'm listening to this --

12 MR. HENES: I know. The music is very distracting.

13 (Laughter)

14 MR. HENES: So we will work with them on a schedule
15 that would work for both -- all the parties and of course the
16 Court.

17 THE COURT: Okay.

18 MR. HENES: There is -- there -- as you can tell
19 there's going to be -- there's a lot to look at --

20 THE COURT: Yes.

21 MR. HENES: -- around the merger. Parties are going
22 to have a lot of different views on it depending on where they
23 sit. And we're going to have to figure out how to best deal
24 with that in the most expeditious way. We've been talking a
25 lot about different ways to do that. We don't have an answer

1 yet --

2 THE COURT: Okay.

3 MR. HENES: -- and I think once a committee gets
4 formed we need to sit down and we may need to come back to you
5 to talk about some ways to expedite that.

6 THE COURT: Okay. Well, if things begin to feel as
7 if they're beginning to move around and head in particular
8 directions and you would like to come back in before the August
9 10th date for a conference or what have you, just let us know
10 and --

11 MR. HENES: Okay.

12 THE COURT: -- we'll find a time to do that --

13 MR. HENES: Great.

14 THE COURT: -- in person/telephone.

15 MR. HENES: That sounds great.

16 THE COURT: All right.

17 Yes, Mr. Stark.

18 MR. STARK: Thank you, Your Honor. Robert Stark from
19 Brown Rudnick.

20 Just by way of introduction, and I tried not to do
21 this in the middle of the back and forth on cash collateral,
22 I've been representing institutions that hold 60 percent of the
23 800 million pre-merger forest bonds.

24 THE COURT: Forest bonds. Okay.

25 MR. STARK: Right. So we're a significant part of

1 that litigation and --

2 THE COURT: Okay.

3 MR. STARK: -- our interests are advanced in that
4 litigation with major respect to this.

5 THE COURT: I'll be getting a 2019 statement from
6 you?

7 MR. STARK: It's in the works, Your Honor. I knew
8 you were going to ask me. Our engagement goes back to December
9 17th, which is the day after the closing of that merger. So
10 we've been working very, very hard for a very long period of
11 time thinking about this litigation, thinking about, among
12 other things, remedies about the litigation. This is a very
13 difficult remedies modeling exercise as well.

14 Now there has been information shared. It has not
15 been a lot yet. It needs to be more. Our view, we've
16 advocated it to many people, that DNA of this case -- that's a
17 phrase I've been using a lot. The DNA of this case is that it
18 wants to litigate, but what we would need to do, I think, is
19 spend a lot of time thinking about the evidence, talking about
20 it, rationalizing it and getting to a conclusion because this
21 case will not be -- it won't persist the way that other cases
22 that have DNA of litigation persist for years on end with
23 litigation. It won't work here. It's just the nature of this
24 particular business.

25 So I rise in part because Your Honor made an

1 invitation to the debtors about coming back if there were
2 thoughts about procedures and help that may be necessary. And
3 what I would like to do besides just introducing what we've
4 been doing over the last seven plus months is to say if -- if
5 perhaps we would have a need for Your Honor, would you please
6 entertain creditors' views on that because, among other things,
7 getting the information to the people who can study it and
8 present it to the others we've spoken a lot. There's been a
9 lot of conversations among creditors about how to move this
10 case forward.

11 THE COURT: Sure.

12 MR. STARK: And I want to keep that agenda going.
13 It's the best for the case.

14 THE COURT: Understood. And I don't disagree,
15 although certainly at the outset when it appears that the
16 debtors are working very hard to coordinate, handle, reconcile
17 competing claims and concerns in the first instance I'm looking
18 to the debtors to continue that --

19 MR. STARK: Understood.

20 THE COURT: -- process, to be honest brokers, and to
21 move things forward constructively.

22 MR. STARK: Understood.

23 THE COURT: So certainly to the extent that that
24 ceases to be your view of their conduct, I am here. At the
25 moment it seems as if everybody is at least trying to work in

1 that direction.

2 MR. STARK: Thank you, Your Honor.

3 THE COURT: We always answer.

4 Mr. Dublin.

5 MR. DUBLIN: Good afternoon, Your Honor. Phil
6 Dublin, Akin Gump for the Bank of New York.

7 I would first like to apologize for the shuttling
8 back and forth. Mr. Stamer is really covering for me today. I
9 wasn't able to review the documents before due to a death in
10 the family. So --

11 THE COURT: Sorry.

12 MR. DUBLIN: -- he was handling that for me today so
13 I apologize for that. Thank you.

14 I agree with much of what Mr. Stark said. I also
15 would like to highlight that we believe that while the debtors
16 are taking a first step with one cause of action, we believe
17 that there are a number of causes of action that will need to
18 be investigated. Many will likely be pursued. That will rise
19 and fall on the same facts and a lot of the same law as what we
20 evaluated and analyzed in connection with the complaint the
21 debtors already filed.

22 I think it's important that the creditors' committee
23 be formed and that the respective parties be able to meet with
24 the creditors' committee, advise the creditors' committee of
25 their respective views in that process so that the scheduling

1 takes place with their involvement as well.

2 THE COURT: Sure. Sure. Well, the creditors'
3 committee and creditors' committee counsel is going to play a
4 vital role.

5 MR. DUBLIN: Thank you, Your Honor.

6 THE COURT: So we'll look forward to their being
7 engaged and brought up to speed.

8 MR. DUBLIN: Thank you.

9 THE COURT: Mr. Herman.

10 MR. HERMAN: Your Honor, very briefly again. Brian
11 Herman from Paul Weiss for Wilmington Trust.

12 I didn't mean by saying that we're going to file a
13 prompt motion to dismiss to be in any way antagonistic. We
14 were --

15 THE COURT: I didn't take it that way.

16 MR. HERMAN: We were served with the complaint. But
17 I do think that streamlining the case is important and I
18 actually think given that there are a couple of very discreet
19 simple legal issues that the complaint implicates it very well
20 lends itself to a motion to dismiss which, if we're right,
21 would get rid of this litigation very quickly.

22 THE COURT: Well, not to unfairly prejudice you by
23 talking about a case which you didn't participate in actively,
24 I had heard that before in a case in which there were claims
25 that one party said were without merit and one party said were

1 easily amenable to summary dismissal. Sometimes it's true,
2 sometimes it's not.

3 I think the paramount goal here is proceeding in an
4 orderly fashion and we're just -- I, in particular, I am going
5 to have to get smarter. It's only day two. And you'll work
6 together and if it gets to the point where you believe that
7 that's something that you need to do, that's -- we'll talk
8 about doing it.

9 MR. HERMAN: Great. Thank you, Your Honor.

10 THE COURT: All right. Mr. Schwartzberg, you going -
11 - coming back?

12 MR. SCHWARTZBERG: I'm coming back, Your Honor.

13 THE COURT: We'll always make room for you up front.

14 MR. SCHWARTZBERG: Your Honor, one thought that the
15 U.S. Trustee had, and I thought this would be a good time to
16 bring it out, since you have the debtor with its independent
17 committee, which I clearly think the other side of the table is
18 not going to trust, I --

19 THE COURT: Well, let's not --

20 (Laughter)

21 THE COURT: -- let's not -- let's not assume that.

22 MR. SCHWARTZBERG: We thought perhaps to get an
23 independent party to come in and perhaps look at these claims
24 and -- rather than having different parties with discovery and
25 litigation and having an honest broker come in, perhaps the

1 examiner come in and --

2 THE COURT: Well, in the first instance the debtors'
3 in the driver's seat. And until I have reason to believe on my
4 own or because of something that somebody's bringing to my
5 attention that the debtors not fulfilling its fiduciary duties
6 to the creditors and each of the creditors, that's what we're
7 going to do.

8 I know you're coming from an appropriate sentiment,
9 but right now I've got counsel for the debtors. I've got an
10 independent committee. I've got very well represented
11 antagonists, antagonistic parties. So that's what we're --
12 that's where we're going to go and I would request that the
13 debtor be given that runway and leeway to try to do what it's
14 setting out to accomplish.

15 MR. SCHWARTZBERG: Thank you, Your Honor.

16 THE COURT: But I appreciate your thought.

17 MR. HENES: Your Honor --

18 THE COURT: I think that's it.

19 MR. HENES: -- I was just going to say if there's --
20 yeah. If there's nothing else, thank you, Your Honor.

21 THE COURT: I think we're adjourned. I appreciate
22 all of your attention and your patience. We will need to get
23 all the orders from you, and just keep us apprised as to the
24 timing and whereabouts of the cash collateral order.

25 MR. HENES: Thank you.

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THE COURT: Okay. Have a good day.

(A chorus of thank you)

(Whereupon, these proceedings were concluded at 1:28 p.m.)

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I N D E X

E X H I B I T S

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| | in support of first day motions | | |

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| Equity trading motion granted | 115 | 18 |
| Creditor matrix motion granted | 116 | 7 |
| Schedules extension motion granted | 116 | 7 |
| Noticing agent application approved | 116 | 20 |

C E R T I F I C A T I O N

We, Lisa Beck and Sherri Lyn Breach, certify that the foregoing
transcript is a true and accurate record of the proceedings.

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